18-2121(L)

18-2670 (Con)

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

NATURAL RESOURCES DEFENSE COUNCIL, INC. and STATE OF VERMONT,
Petitioners,

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, and ANDREW R. WHEELER, in his capacity as Acting Administrator of the U.S. Environmental Protection Agency,
Respondents.

On Petition for Review of a Rule of the
U.S. Environmental Protection Agency

CORRECTED PAGE PROOF OPENING BRIEF OF PETITIONER NATURAL RESOURCES DEFENSE COUNCIL

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CORPORATE DISCLOSURE STATEMENT

Petitioner Natural Resources Defense Council, Inc. (NRDC), is a non-profit corporation with no parent corporation and no outstanding stock shares or other securities in the hands of the public. NRDC does not have any parent, subsidiary, or affiliate that has issued stock shares or other securities to the public. No publicly held corporation owns any stock in NRDC.

Dated: January 11, 2019

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INTRODUCTION

The dangers of mercury are well known. In high doses it can cause tremors, convulsions, and even death. And even in low doses, exposure to the most toxic form of mercury—methylmercury—adversely affects motor skills and sensory ability, posing particular risks to developing fetuses, infants, and young children. Like lead, exposure to methylmercury in the womb adversely affects a child's cognitive functioning, fine motor skills, and visual spatial skills.

Despite the known harms of exposure to mercury, information about its prevalence in the U.S. economy remains troublingly incomplete. This much is known: Mercury enters the environment from a variety of sources. Some sources release mercury as an unintended byproduct of an industrial process, such as the combustion of ores or other materials that naturally contain mercury. EPA maintains national inventories for such releases. But mercury is also used intentionally in manufacturing processes and in various products—from the familiar button cell batteries in digital watches and toys to switches and relays used in a wide array of consumer products and industrial

applications. For these intentional uses of mercury, there is no comparable national database or inventory.

These continuing uses of mercury have resulted in pervasive environmental contamination that presents serious ongoing risks to public health. Indeed, all fifty states and the federal government maintain advisories warning consumers to limit their intake of certain fish to reduce mercury exposure.

For more than a decade, EPA has recognized that its lack of information on mercury is hindering its ability to reduce the risks from the chemical to human health and the environment. Accurate, comprehensive data on how mercury enters the U.S. economy and about the products and processes that use mercury are essential to informing the actions necessary to reduce these serious risks.

In 2016, Congress acted to fill this information gap by passing the Frank R. Lautenberg Chemical Safety for the 21st Century Act (the "Lautenberg Act"), which amended the Toxic Substances Control Act (TSCA). As amended, TSCA directed EPA to create a national mercury inventory and to collect the data on mercury supply and use necessary to create such an inventory. Based on that mercury inventory, Congress

required EPA to recommend actions "to achieve further reductions in mercury use." 15 U.S.C. § 2607(b)(10)(C)(ii).

To meet Congress's directive, EPA promulgated the Mercury Reporting Rule, 83 Fed. Reg. 30,054 (June 27, 2018). The Reporting Rule requires manufacturers and importers of mercury and "mercury-added products" to report to EPA the amount of mercury they manufacture, use, store, export, import, and distribute in commerce—information that is essential to the creation of a meaningful and accurate national inventory as TSCA requires. But contrary to the plain text of TSCA, the Reporting Rule unlawfully exempts two critical categories of reporters from its requirements.

First, the Rule does not require manufacturers and importers of mercury-added products to report mercury that is present only in "components" of those products. That is, the importer of a battery must report the mercury in the battery, but the importer of a watch containing that same mercury battery is exempt. EPA's attempt to justify that exception as an interpretation of the statutory phrase "mercury-added products" ignores the plain meaning of those words, the structure and purpose of the statute, and the consistent usage of that

term by the association of state agencies with similar reporting programs with which TSCA requires EPA to coordinate its Reporting Rule. The result is a Reporting Rule that will leave the Agency, Congress, and the public without critical information about the prevalence of a dangerous neurotoxin.

Second, the Reporting Rule exempts those manufacturers and importers who report under a separate TSCA reporting provision—the Chemical Data Reporting (CDR) program. Because the CDR program requires reporting from the nation's largest chemical manufacturers and importers on a different schedule from that of the Reporting Rule, the CDR data will be out of date and incomparable with the rest of the Reporting Rule data. Accordingly, this exemption will deny EPA, Congress, and the public relevant and timely information about the most significant suppliers of mercury in the country. EPA relied on the trivial costs this exception would save for reporting firms, but it failed to consider the substantial benefits forgone by such an exception. That faulty analysis was arbitrary and capricious and cannot sustain EPA's decision.

The two exemptions in the Reporting Rule will prevent EPA from publishing the full "inventory" of mercury use, supply, and trade in the United States that Congress required. EPA's faulty inventories will prevent the Agency from making sound recommendations to Congress for how to reduce the public's risks from mercury exposure, and will prevent NRDC, the public, and Congress from evaluating those recommendations based upon a complete dataset. The unlawful Reporting Rule exemptions will thus hinder further progress to reduce ongoing risks to public health and the environment from mercury contamination in our air, land, water, food, and consumer products. The Reporting Rule exemptions must be set aside.

STATEMENT OF JURISDICTION

Petitioner Natural Resources Defense Council (NRDC) challenges EPA's final rule establishing reporting requirements for mercury manufacturers and importers. JA___ (Pet. for Review, Dkt. 1-2, 18-2121 (July 19, 2018)).[1] This Court has jurisdiction to review a rule promulgated under TSCA. 15 U.S.C. § 2618(a)(1)(A). Venue is proper in

[1] This brief cites materials in the Joint Appendix as JA___, and materials included in the Addendum at the end of this brief as ADD___.

this Court because NRDC resides in this Circuit. *Id.*; ADD39 (Lennett Decl. ¶ 3). The petition for review is timely because it was filed on July 19, 2018, JA___ (Pet. For Review, Dkt. 1-2, 18-2121 (July 19, 2018)), within sixty days of the final rule's promulgation, 15 U.S.C. § 2618(a)(1)(A).

NRDC has standing to challenge the Reporting Rule for the reasons explained below. *See infra* Argument § I.

STATEMENT OF THE ISSUES PRESENTED

1. Whether the Reporting Rule is unlawful because it exempts manufacturers and importers of products with mercury-added component parts, *see* 40 C.F.R. § 713.7(b)(2), (b)(3), despite TSCA's instruction that EPA require reporting from "any person who manufactures [or imports] mercury or mercury-added products," 15 U.S.C. § 2607(b)(10)(D)(i).

2. Whether the Reporting Rule is unlawful because it exempts manufacturers and importers of mercury in amounts (i) greater than or equal to 2,500 pounds per year for elemental mercury, or (ii) greater than or equal to 25,000 pounds per year for mercury compounds, *see* 40 C.F.R. § 713.9(a)—specifically three of the largest mercury suppliers in

the country—despite TSCA's requirement that EPA require reporting from "any person" who manufactures or imports mercury and that EPA prepare an accurate and comprehensive "inventory" of mercury supply and trade, *see* 15 U.S.C. § 2607(b)(10)(B), (b)(10)(D)(i).

STATEMENT OF THE CASE

Petitioners ask this Court to review and set aside the Mercury Reporting Rule promulgated by the Environmental Protection Agency (EPA). JA___ (Mercury; Reporting Requirements for the TSCA Mercury Inventory, 83 Fed. Reg. 30,054 (June 27, 2018) ("Final Rule")) (codified at 40 C.F.R. § 713).

I. Mercury is a dangerous neurotoxin that continues to threaten human health

Mercury contamination is a "major public health threat." JA___ (EPA, Economic Analysis for the Reporting Requirements for the TSCA Mercury Inventory at 1-1 (June 20, 2018) ("EPA Final Economic Analysis")). Mercury poses substantial risks to human health and the environment because it is a potent neurotoxin that does not degrade in the environment over time. JA___ (EPA, Health Effects of Exposures to Mercury (no date)). In high doses, mercury can cause tremors, convulsions, and even death. *See* JA___ (Mercury; Reporting

Requirements for the TSCA Mercury Inventory, 82 Fed. Reg. 49,564, 49,567 (proposed Oct. 26, 2017) ("Proposed Rule")).

Methylmercury is the most toxic form of mercury, and even in low doses it harms the nervous system, causing symptoms including "personality changes . . . , tremors, changes in vision, deafness, muscle incoordination, loss of sensation, and difficulties with memory." Mercury Switches in Motor Vehicles; Proposed Significant New Use Rule, 71 Fed. Reg. 39,035, 39,040 (proposed July 11, 2006). Exposure to methylmercury poses particular risks to fetuses, infants, and young children, whose developing brains and nervous systems are most sensitive to mercury's effects. *See id.*; Mercury Switches in Motor Vehicles; Significant New Use Rule, 72 Fed. Reg. 56,903, 56,904-05 (Oct. 5, 2007); JA___ (FDA, Mercury Poisoning Linked to Skin Products (July 26, 2016)). Exposure to methylmercury in the womb impairs the child's ability to learn and process information later on, JA___ (EPA, EPA's Roadmap for Mercury at 7 (2006) ("EPA Roadmap")), including by adversely affecting cognitive thinking, memory, attention, language, fine motor skills, and visual spatial skills, JA___ (EPA, Health Effects of Exposures to Mercury (no date)).

Mercury is released into the environment from a variety of sources. Some releases come from the unintentional use of mercury—for example, through burning fossil fuels, such as coal. *See* JA___ (Proposed Rule, 82 Fed. Reg. at 49,567). Burning coal releases mercury into the air, and it is then deposited onto land and into waterways. *See* JA___ (EPA Roadmap at 8).

Mercury also enters the environment when it is intentionally used as an additive in a wide range of industrial processes and in the manufacture of products that are common in the U.S. market. Mercury has been historically used in pesticides, paint, dental amalgam, switches and relays, batteries, lamps, medical devices such as fever thermometers and blood pressure cuffs, and in some polyurethane products such as coatings on gymnasium floors. *See* JA___ (EPA Roadmap at 36). While some of these uses of mercury have been phased out, the legacy of those uses lives on. There are, for example, millions of mercury-containing switches in cars. *See* JA___ (*id.* at 25); JA___ (Comment of Steel Manufacturers Association at 3 (Jan. 11, 2018) ("Steel Manufacturers Comments")). In 2003 alone, vehicles taken off

the road contained 8.5 million mercury switches. JA___ (EPA Roadmap at 25).

Mercury used in such products can be released into the environment throughout the products' lifecycles, from production, to use, to disposal at the end of their useful life. JA___ (Proposed Rule, 82 Fed Reg. at 49,567). In particular, mercury may enter the environment when discarded mercury-added products—like appliances or automobiles—are recycled and the mercury contained in those products is unwittingly released into the air. *See* JA___ (Steel Manufacturers Comments at 3).

Once in the environment, mercury becomes converted into methylmercury by microorganisms and other natural processes. JA___, ___ (EPA Roadmap at 3, 7). Methylmercury then bioaccumulates in the food chain, which means it becomes more concentrated in larger fish and wildlife. JA___ (*id.* at 3). Most human exposure to mercury comes from ingesting fish that contain methylmercury. JA___ (*id.* at 4).

Thanks in large part to state and federal law, U.S. mercury use has fallen substantially since 1980. JA___ (Mercury; TSCA Section 21 Petition; Reasons for Agency Response, 80 Fed. Reg. 60,584, 60,585

(Oct. 7, 2015) ("Petition Denial")); *see also* Elemental Mercury Used in Barometers, Manometers, Hygrometers/Psychrometers; Significant New Use Rule, 76 Fed. Reg. 26,225, 26,227 (May 6, 2011); JA___ (Proposed Rule, 82 Fed. Reg. at 49,568). Domestic mercury mining ended in 1991, and today elemental mercury is produced primarily as a byproduct of gold production and when mercury is recovered from recycled waste. JA___ (Proposed Rule, 82 Fed. Reg. at 49,568).

Despite these reductions, it is also undisputed that mercury use in this country is still too high and continues to pose substantial risks to human health. *See* JA___ (Proposed Rule, 82 Fed. Reg. at 49,567-68); 162 Cong. Rec. S3511, S3522–23, 2016 WL 3172504 (daily ed. June 7, 2016) (statement of Sen. Leahy); 15 U.S.C. § 2607(b)(10)(C)(ii). The risks of mercury pollution come from both current uses of mercury and from products that, although no longer currently manufactured, still exist in the economy and continue to pose a threat. *See* JA___ (EPA Roadmap at 9). Thus, while some categories of mercury use have been largely phased out domestically—including pesticides and paint—older products and replacement parts containing mercury still exist. *See id.* Mercury is still used to manufacture (or is present in imported)

switches and relays, dental amalgam, fluorescent lights, batteries, and other products. JA___, ____ (*id.* at 33, 36). Moreover, mercury (and mercury-compound) use in industrial processes remains largely unknown.

Given the ongoing threat, all fifty states and the federal government maintain fish consumption advisories urging consumers to limit their consumption of certain fish to avoid exposure to mercury. 76 Fed. Reg. at 26,227; JA___ (EPA Roadmap at 47). Because of mercury's potency and its global impacts, the international community took the extraordinary step of negotiating the Minamata Convention on Mercury, a binding international agreement controlling all aspects of the lifecycle of mercury, including restricting mercury use in product manufacturing and industrial processes. JA___ (Minamata Convention on Mercury, Oct. 10, 2013 ("Minamata Convention")). The United States is a party to this Convention, which became effective on August 17, 2017. *See* JA___ (Final Rule, 83 Fed. Reg. at 30,055). Under the Convention, the United States has committed to curtailing mercury use in product manufacturing and industrial processes, and to reporting information demonstrating its progress toward those commitments.

JA___, ___, ___ (Minamata Convention arts. 4, 5, 21); *see* JA___ (Proposed Rule, 82 Fed. Reg. at 49,566).

II. EPA recognizes that missing information hinders regulation to reduce mercury risks, but has failed to act

For more than a decade, EPA has recognized and reaffirmed the need for further action to reduce risks to public health from mercury exposure. In 2006, EPA published a "Roadmap for Mercury" and set as its "long-term goal" the reduction of "risks associated with mercury," while recognizing the commonsense proposition "that to reduce th[ose] risk[s] . . ., the Agency must first understand what contributes to the risk." JA___ (EPA Roadmap at 9); *see* JA___ (*id.* at 5). Indeed, information-gathering rules are a critical aspect of TSCA—and of chemical risk management generally. *See generally Physicians Comm. for Responsible Med. v. Johnson*, 436 F.3d 326, 328 (2d Cir. 2006) (noting "TSCA's mandate" to collect and disseminate information about toxics).

As the Agency noted in 2006, "[r]eliable and publicly available data on mercury use is a prerequisite to gauging the success of EPA initiatives to reduce the use of mercury." JA___ (EPA Roadmap at 38). Existing sources of information, however, were "limited." *Id.* EPA

maintains some data on unintentional releases of mercury, including through the National Emissions Inventory, *see* JA___ (EPA Roadmap at 23), and the Toxic Releases Inventory (TRI), *see* JA___ (EPA, Toxic Releases Inventory (TRI) Program (no date)). But similar inventories of intentional mercury use, in products and manufacturing processes, and the production and import of mercury and mercury compounds, do not exist. EPA therefore identified as a "priority" the development of a nationwide database inventorying mercury use. JA___ (EPA Roadmap at 39). The Agency anticipated developing such an inventory by 2007. *Id.*

It did not. Instead, for more than a decade EPA repeatedly acknowledged the lack of adequate information about mercury, *see, e.g.*, JA___ (EPA Roadmap at 9); JA___ (EPA, Report to Congress: Potential Export of Mercury Compounds from the United States for Conversion to Elemental Mercury at xi, xiv (2009) ("2009 Report")); JA___ (Petition Denial, 80 Fed. Reg. at 60,585), while doing little to address it. By 2015, EPA still had not compiled an inventory of mercury use. NRDC and other stakeholders therefore petitioned EPA to promulgate a reporting rule under TSCA that would enable EPA to collect comprehensive data

about mercury use, manufacture, and importation. *See* JA___ (Petition Denial, 80 Fed. Reg. at 60,584).

EPA denied the petition, notwithstanding its agreement with the petitioners "that there is value in gathering additional information to better understand continuing uses of mercury, to further reduce such uses, and to prevent potential risks to human health and the environment from mercury exposure." *Id.* Rather than requiring reporting to collect complete information, EPA continued to follow its alternate "[s]trategy." JA___ (*id.* at 60,585). That strategy focused on "request[ing]" information from manufacturers and importers and hoping that such information would be sufficient. JA___ (*id.* at 60,586). EPA attempted to collect mercury-use information piecemeal, including by subpoenaing a subset of mercury producers. *See* JA___ - ___ (*id.* at 60,586-87); JA___ (EPA, Subpoena and Information Request (Mar. 20, 2015)).

The strategy did not work. As discussed further below, the information EPA gleaned from this piecemeal approach was wholly insufficient to allow EPA to assess how to further reduce mercury risks. For example, as a result of the 2015 subpoena, the Agency realized that

it could not account for where in the stream of commerce 26 of the 66 metric tons (almost 40%) of mercury manufactured by the five companies receiving the subpoena went. JA___ (Proposed Rule, 82 Fed. Reg. at 49,568).

III. Congress amends TSCA to address the data gaps about mercury use and supply

In 2016, Congress stepped in. As part of the Lautenberg Act, a set of amendments to TSCA, Congress required EPA to "carry out and publish in the Federal Register an inventory of mercury supply, use, and trade in the United States" every three years. 15 U.S.C. § 2607(b)(10)(B). "Despite an EPA commitment in 2006 to collect this data," there was "not yet any good data on mercury supply and uses in the United States." 162 Cong. Rec. at S3522–23 (statement of Sen. Leahy). That "lack of data" had limited Congress's "ability to reduce health risks from mercury exposure" and would "compromise [its] ability to comply with the Minamata Convention." *Id.*

Congress directed EPA, "[i]n carrying out the inventory," to "identify any manufacturing processes or products that intentionally add mercury," and to "recommend actions, including proposed revisions of Federal law or regulations, to achieve further reductions in mercury

use." 15 U.S.C. § 2607(b)(10)(C). Congress required EPA to publish the first inventory in 2017, and subsequent inventories every three years thereafter. *Id.* § 2607(b)(10)(B).

To help EPA prepare the inventory, Congress required "any person" who manufactures or imports "mercury or mercury-added products or otherwise intentionally uses mercury in a manufacturing process [to] make periodic reports" to EPA. *Id.* § 2607(b)(10)(D)(i).[2] Congress included only one exemption from the reporting requirements: persons that generate, handle, or manage mercury-containing waste. *Id.* § 2607(b)(10)(D)(iii).[3] Congress required EPA to issue a rule no later than June 22, 2018, implementing the reporting requirements for the TSCA mercury inventory. *Id.*

"To avoid duplication," Congress directed EPA to "coordinate the reporting" for the inventory with the Interstate Mercury Education and Reduction Clearinghouse (IMERC). *Id.* § 2607(b)(10)(D)(ii). IMERC is a

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[2] Congress did not define "mercury-added product" in the statute. As explained further below, the term means simply products to which mercury has been added. *See infra* Argument § II.A.

[3] Mercury-containing waste is already subject to reporting requirements under the Resource Conservation and Recovery Act (RCRA). 42 U.S.C. § 6921 *et seq.*; *see* 162 Cong. Rec. S3511, S3522–23 (statement of Sen. Leahy).

coalition of thirteen state environmental agencies that provides technical and programmatic assistance to states that have enacted mercury-reduction legislation. IMERC maintains a database of information on mercury-added products—which, as explained further below, provides important but incomplete data on mercury use. JA___ (Northeast Waste Mgmt. Officials' Ass'n (NEWMOA), Mercury Products Database, About the Database (Dec. 19, 2014)); *see infra* p.20. A significant number of IMERC member states have laws requiring manufacturers of mercury-added products to report to IMERC's database every three years. *See* JA___ (Comment of Interstate Mercury Education and Reduction Clearinghouse at 1-2 (Dec. 22, 2017) ("IMERC Comments")).[4] Some IMERC states also require that mercury-added products bear a label identifying them as such. *See* JA___ (*id.* at 4).[5]

[4] The states that require reporting to IMERC include Connecticut, Louisiana, Maine, Massachusetts, New Hampshire, New York, North Carolina (for automobiles only), Rhode Island, and Vermont. JA___ (IMERC Comments at 1).

[5] The states that require labeling of mercury-added products are Connecticut, Louisiana, Maine, Massachusetts, Minnesota, New York, Rhode Island, Vermont, and (for lamps only) Washington. JA___ (IMERC Comments at 4).

IV. EPA's 2017 Inventory demonstrates a lack of data

On March 29, 2017, before EPA promulgated the mercury reporting rule required by the TSCA amendments, EPA published its initial mercury inventory. JA___ (EPA, Office of Chem. Safety & Pollution Prevention, Mercury U.S. Inventory Report: Supply, Use, and Trade (2017) (the "2017 Inventory")); *see* JA___ (Mercury; Initial Inventory Report of Supply, Use, and Trade, 82 Fed. Reg. 15,522 (Mar. 29, 2017) (notice of publication)). The 2017 Inventory was based on EPA's review of publicly available data, which EPA acknowledged were "notably limited in applicability to certain aspects of supply, use, and trade, and [were]—in some cases—outdated." JA___ (2017 Inventory at 3). Information on mercury production from metal mining and processing relied only on 2011 data from one producer. JA___ (*id.* at 5). Information on elemental mercury use in manufacturing was based on 2013 data covering only one type of process, JA___ (*id.* at 7), despite EPA's awareness that many other manufacturing processes may use mercury, *see* JA___ (Proposed Rule, 82 Fed. Reg. at 49,564-65). Information on mercury-compound production was based on 2011 data from two producers, JA___ (2017 Inventory at 9), and mercury-

compound use in manufacturing was entirely "unknown," JA___ (*id.* at 10).

EPA's inventory was incomplete because the Agency's prior data-gathering efforts had failed. For mercury-added products, EPA relied exclusively on the IMERC database despite the limited scope of IMERC reporting. As EPA noted, "only companies selling mercury-added products within" the nine IMERC-reporting states "need to report [to IMERC]." JA___ (2017 Inventory at 6). Thus, "the total quantities of mercury may not be true national totals because, if a company sells products only in states other than IMERC Notification states, then the company does not report to IMERC." JA___ (2017 Inventory at 6).

Critically, the sale of mercury switches and relays has been prohibited in the IMERC states since 2010. *See* JA___ (*id.* at 7 & n.23). Therefore, companies importing, manufacturing, or selling switches and relays are no longer required to report their activities to IMERC. *See id.* This represents a major gap in IMERC's information: data from 2010 reflect that switches and relays accounted for more than 40 percent of all mercury in mercury-added products nationally. *See* JA___ (*id.* at 7); *see also* JA___ (Petition Denial, 80 Fed. Reg. at 60,586) (recognizing

that "switches and relays . . . represent the largest category of mercury-added products").

EPA's initial inventory was sufficiently incomplete that EPA was unable to make any recommendations for further mercury use reductions, JA___ (2017 Inventory at 3), despite Congress's mandate, 15 U.S.C. § 2607(b)(10)(C).

V. EPA's Mercury Reporting Rule exempts major mercury sources

On June 27, 2018, EPA published the final Mercury Reporting Rule in the Federal Register. JA___ (Final Rule, 83 Fed. Reg. 30,054). It is codified at 40 C.F.R. Part 713.

The Rule applies to manufacturers, importers, and processers of mercury, including mercury compounds and mercury-added products. *Id.* § 713.1(a), (b); *see id.* § 713.5(b) (table of mercury compounds subject to Rule). In general, the Rule requires manufacturers and importers of mercury (and mercury compounds) to report the amount of mercury they (1) manufacture, (2) import, (3) export,[6] (4) store, and (5) distribute

[6] Effective January 1, 2013, the Mercury Export Ban Act prohibits, with limited exceptions, the export of elemental mercury from the United States. Mercury Export Ban Act of 2008, Pub. L. No. 110-414, 122 Stat. 4341 (2008); *see* 15 U.S.C. § 2611(c)(1). Five specific mercury compounds

in commerce. *Id.* § 713.9(b). The Rule imposes the same requirements on manufacturers and importers of mercury-added products, except that they need not report the amount of mercury they store. *Id.* § 713.9(d). The Rule also requires those who intentionally use mercury in a manufacturing process—e.g., in chlorine production, *see id.* § 713.11(c)(1)—to report the amount of mercury intentionally used in such processes and the amount of mercury stored, *id.* § 713.9(e).

However, EPA carved out two significant—and unlawful—exceptions to the Rule.

***Component Exception*:** First, EPA's Reporting Rule interprets "mercury-added products" to exclude products with mercury-added "components." *See* JA___ (Final Rule, 83 Fed. Reg. at 30,061). A component is a part of another (larger) product; for instance, a battery is a component of a watch. The Rule thus *exempts* from the reporting obligations any person who manufactures or imports "a product that contains a component that is a mercury-added product." 40 C.F.R. § 713.7(b)(2)-(3). Under EPA's Reporting Rule, a manufacturer or

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are also banned from export, effective January 1, 2020. *See* JA___ -___ (Final Rule, 83 Fed. Reg. at 30,061-62).

importer of watches with mercury-added batteries has no reporting obligation; neither does a manufacturer or importer of vehicles with mercury-added switches or lamps.

***Chemical Data Reporting (CDR) Exception*:** Second, the Reporting Rule exempts persons who manufacture or import mercury or mercury compounds above certain quantity thresholds from reporting three pieces of data critical to understanding mercury supply. Specifically, the Rule does not require those who manufacture or import mercury "in amounts greater than or equal to 2,500 pounds (lbs.) for elemental mercury or greater than or equal to 25,000 lbs. for mercury compounds for a specific reporting year" to report the amount of mercury they manufacture, import, or export. *Id.* § 713.9(a). Rather, they need only report the mercury they store or distribute in commerce. *Id.* This exception thus prevents the collection of quantitative mercury production and import data from three of the nation's largest mercury suppliers, on the theory that they are already required to report this information on a separate schedule pursuant to EPA's CDR rule. *See id.* § 713.9(a); JA___ (Final Rule, 83 Fed. Reg. at 30,062-63).

But the CDR rule differs from the Mercury Reporting Rule in certain important respects. The Mercury Reporting Rule requires mercury (and mercury compound) production and import data for calendar year 2018 to be submitted by July 1, 2019. 40 C.F.R. § 713.17(b). Under the CDR rule, however, the latest production data available to EPA as of July 1, 2019 will be for calendar year 2015. *Id.* §§ 711.15, 711.20. Accordingly, the CDR data will be three years older than the rest of the mercury supply, use, and trade data, and thus incomparable for three of the largest mercury suppliers in the country. EPA's supply and use data will therefore not be consistent and complete for any given calendar year, and thus cannot provide the basis for the inventory sought by Congress.

SUMMARY OF THE ARGUMENT

Congress directed EPA to compile an inventory of the nation's mercury use, supply, and trade, and to require mercury users, importers, and manufacturers to report the information necessary for such an inventory. The exceptions in EPA's Reporting Rule, however, ensure that EPA will once again fail to compile an accurate, comprehensive inventory. That failure denies the Agency, Congress,

and the public—including NRDC—the information they need to understand the threat mercury pollution continues to pose. The two exceptions at issue here are unlawful and must be set aside.

First, despite Congress's directive to EPA to collect data on "mercury-added products," 15 U.S.C. § 2607(b)(10)(D)(i), EPA's Component Exception interprets that term to *exclude* products containing "components" that are themselves "mercury-added product[s]." 40 C.F.R. § 713.7(b)(2)-(3). TSCA's text forecloses this interpretation. The Reporting Rule exempts manufacturers and importers of products that have mercury added to a "component" of those products because, EPA concluded, they are not "mercury-added products." JA___ (Final Rule, 83 Fed. Reg. at 30,061). That cannot be. A child's toy running on a mercury battery is as much a "mercury-added product" as the battery itself.

Furthermore, EPA's interpretation is plainly unlawful because it frustrates Congress's stated goal to fill the critical gaps in its understanding of the sources of mercury pollution. EPA misunderstands Congress's aim; it contends that the inventory ought to merely catalog *types* of products that contain mercury. That is not so.

Indeed, EPA recognized that the Agency lacks data about *quantities* of mercury produced and used, *see* JA___ (Proposed Rule, 82 Fed. Reg. at 49,568), and that such data are "the core elements" of the inventory Congress mandated, JA___ (Final Rule, 83 Fed. Reg. at 30,068). The data Congress requested are necessary not to identify what types of products use mercury—which are well known—but instead to identify precisely how quantities of mercury are being used so further mercury use reductions can be rationally evaluated.

EPA's interpretation of "mercury-added products" also conflicts with the common usage of the term. IMERC, the laws of the states it helps coordinate, and the Minamata Convention all recognize that "mercury added products" include products with mercury-containing components. In passing the Lautenberg Act, Congress specifically directed EPA to "coordinate the reporting" with IMERC to collect data for the mercury inventory. *See* 15 U.S.C. § 2607(b)(10)(D)(ii). Instead, EPA adopted a definition of "mercury-added products" directly at odds with IMERC's. EPA's interpretation of the statute is foreclosed by the statutory text.

Moreover, even if the statutory phrase "mercury-added products" were ambiguous, which it is not, EPA's interpretation is unreasonable and must be set aside. It exempts mercury-added products that are identical to non-exempt products in every material respect, thereby frustrating Congress's purpose in requiring the inventory. EPA's purported justification for the exception—a concern for double counting—does not even apply to imports and is otherwise readily resolved. Further, EPA's concern that manufacturers of products containing mercury-added components do not know that their products have mercury-added components is belied by the very example on which EPA relies: automobile manufacturers are keenly aware of the mercury-added products used as components in their vehicles. EPA offers no other credible justification for the exception.

Second, the CDR Exception exceeds the limited discretion TSCA affords EPA. While TSCA provides that the Administrator should, "to the extent feasible," "not require reporting which is unnecessary or duplicative," *id.* § 2607(a)(5), there is nothing "unnecessary or duplicative" about the data required under the Reporting Rule from manufacturers and importers who are also subject to the CDR program.

That is because of a fundamental difference between the two programs: the CDR program requires reporting on a four-year cycle, rather than the three-year cycle of the Reporting Rule. The resulting discrepancy will prevent an accurate inventory of mercury, trade, and use for each reporting year.

The CDR Exception is also unlawful because EPA's only justification for adopting it is an irrational analysis that gave undue weight to trivial cost savings. By EPA's own estimate, the CDR Exception will save regulated companies approximately one-tenth of one percent of the total cost of the Reporting Rule program. To save those costs, EPA would forsake substantially all of the benefits that complete, accurate and timely data would bring. Such arbitrary decision making cannot support the Agency's rule.

Both exceptions, therefore, are contrary to Congress's clear directives and cannot stand.

STANDARD OF REVIEW

The Court's review of the Mercury Reporting Rule is governed by the standard set forth in the Administrative Procedure Act. 15 U.S.C. § 2618(c)(1)(B); *see* 5 U.S.C. § 706. Under this standard, the Court must

hold unlawful and set aside the Rule if it is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). Under the familiar *Chevron* framework, an agency regulation that conflicts with the plain meaning of statutory text or that reflects an unreasonable interpretation of ambiguous statutory language is unlawful. *New York v. FERC*, 783 F.3d 946, 954-55 (2d Cir. 2015); *see Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 842-43 (1984).

In addition, agency action is arbitrary and capricious if the agency "entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Nat. Res. Def. Council v. EPA*, 808 F.3d 556, 569 (2d Cir. 2015) (quoting *Islander E. Pipeline Co. v. McCarthy*, 525 F.3d 141, 150-51 (2d Cir. 2008)); *see Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

ARGUMENT

I. NRDC has standing to challenge the Mercury Reporting Rule

NRDC has standing to challenge the Mercury Reporting Rule. NRDC has (1) "suffered an injury in fact" that (2) is "fairly traceable" to the unlawful exemptions in the Reporting Rule, and that (3) "will be redressed by a favorable decision." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992) (internal quotation marks and alterations omitted). The Rule will prevent EPA from publishing an accurate, comprehensive mercury inventory as Congress required. As a direct result, NRDC will be deprived of the information about U.S. mercury use, supply, and trade that Congress required EPA to develop and disclose, and on which NRDC relies for its public education and advocacy activities to further its mission of protecting communities from harmful exposures to mercury.

Under settled Supreme Court precedent, "a plaintiff suffers an 'injury in fact' when the plaintiff fails to obtain information which must be publicly disclosed pursuant to a statute." *Fed. Election Comm'n v. Akins*, 524 U.S. 11, 21 (1998); *see Pub. Citizen v. U.S. Dep't of Justice*, 491 U.S. 440, 449 (1989); *accord Spokeo, Inc. v. Robins*, 136 S. Ct. 1540,

1549-50 (2016), *as revised* (May 24, 2016) (citing *Akins*, 524 U.S. at 20-25, and *Pub. Citizen*, 491 U.S. at 449).

The Reporting Rule denies NRDC information that must be publicly disclosed pursuant to TSCA. TSCA imposes an explicit publication requirement: EPA must "carry out and publish in the Federal Register an inventory of mercury supply, use, and trade in the United States" every three years. 15 U.S.C. § 2607(b)(10)(B). That inventory is to be informed by "periodic reports" from "any person who manufactures mercury or mercury-added products or otherwise intentionally uses mercury in a manufacturing process." *Id.* § 2607(b)(10)(D)(i). The Reporting Rule unlawfully exempts certain persons who manufacture mercury and mercury-added products, thereby ensuring that the resulting inventory EPA will publish will be substantially less comprehensive than it is required to be. *See Waterkeeper All. v. EPA*, 853 F.3d 527, 534 (D.C. Cir. 2017) (holding that a regulation creating exemptions that resulted in "cutting back on [statutory] reporting and disclosure requirements . . . deprive[d] [plaintiff] of information" sufficient to confer standing); *Friends of Animals v. Jewell*, 824 F.3d 1033, 1041 (D.C. Cir. 2016) (statute and

rule eliminating otherwise applicable requirement to publish notice of permit applications in federal register caused informational injury to organization). Thus, the Reporting Rule's exemptions will deny NRDC information—a full accounting of mercury trade, supply, and use in the United States—that must be disclosed under TSCA.

Because Congress has determined that denial of such information imposes a legally cognizable harm, such denial is sufficient to confer standing to NRDC. *See Elec. Privacy Info. Ctr. v. Presidential Advisory Comm'n on Election Integrity*, 878 F.3d 371, 378 (D.C. Cir. 2017). Congress amended TSCA to compel EPA to compile and publish information that Congress and the public had been seeking for years. *See* 162 Cong. Rec. at S3522-23. The Act's "disclosure requirements do not operate in a vacuum," *Strubel v. Comenity Bank*, 842 F.3d 181, 190 (2d Cir. 2016), but rather serve to "increase access to information about chemicals" and "increase consumer confidence." H.R. Rep. No. 114-176, at 16 (2015) (describing purposes of Lautenberg Act amendments to TSCA); *see also Am. Canoe Ass'n, Inc. v. City of Louisa Water & Sewer Comm'n*, 389 F.3d 536, 546 (6th Cir. 2004). Indeed, one of TSCA's express policies is that "adequate information should be developed"

regarding chemicals and their effects on health and the environment. 15 U.S.C. § 2601(b)(1). TSCA specifically requires EPA to "publish" its inventory "in the Federal Register," *id.* § 2607(b)(10)(B), rather than, for example, in a report to Congress, further demonstrating that the purpose of the Act was to provide the public with complete information. The denial of that information to NRDC is thus "the type of harm Congress sought to prevent by requiring disclosure." *Friends of Animals v. Jewell*, 828 F.3d 989, 992 (D.C. Cir. 2016). Given NRDC's long-standing and ongoing efforts to reduce the risk of mercury exposure, and its reliance on government data to do so, *see* ADD40-47, ADD52-54 (Lennett Decl. ¶¶ 5-17, 27-28), "[t]here is no reason to doubt" that this information would help NRDC within the meaning of TSCA, *Akins*, 524 U.S. at 21. This injury is therefore sufficient to confer standing. *See id.*

Beyond the harm imposed by the denial of information itself, the Reporting Rule's exceptions "present[] a 'risk of real harm' to [NRDC's] concrete interest" in using that information to further its efforts to achieve reductions in mercury pollution. *See Strubel*, 842 F.3d at 190. For years, NRDC has advocated for mercury reductions through federal legislation, EPA rulemaking, state-level legislation and regulation, and

international agreements. *See* ADD40-44 (Lennett Decl. ¶¶ 5-11). In addition, NRDC has long sought to inform the public about the risks of mercury through reports and educational materials. *See* ADD80-81 (Wu Decl. ¶¶ 3-5); *see also* ADD41 (Lennett Decl. 4 n.4). NRDC regularly relies on information about mercury use, supply, and trade to further that advocacy. *See* ADD44-47, ADD51-54 (Lennett Decl. ¶¶ 12-17, 25-28); ADD81-82 (Wu Decl. ¶¶ 6-7). In all this work, NRDC has been forced to rely on critically incomplete information about U.S. mercury use and supply from existing sources. ADD44-47 (Lennett Decl. ¶¶12-16).

The inventory and reporting compelled by the Lautenberg Act amendments to TSCA were intended to fill these gaps in information about mercury use, supply, and trade. But because of the Reporting Rule's unlawful exceptions, EPA will fail to fill those gaps—presenting not merely a risk, but a certainty, that NRDC's advocacy and educational efforts will be harmed. *See* ADD45-46, ADD47-54 (Lennett Decl. ¶¶ 13-14, 18-28); ADD82-83 (Wu Decl. ¶¶ 8-10). For instance, without a full accounting of mercury use in products and manufacturing processes, NRDC cannot effectively advocate for reductions in those

uses at the state or federal level. ADD51-52 (Lennett Decl. ¶ 26). Additionally, without a complete inventory of mercury use in products, NRDC will be unable to monitor the United States' compliance with its obligation, under the Minamata Convention, to reduce the use of mercury in switches and relays to *de minimis* levels. ADD52-54 (Lennett Decl. ¶ 28).

NRDC's injury is fairly traceable to the Rule's unlawful exemptions. The information supplied under the Reporting Rule is "virtually determinative" of the information that EPA will publish in its 2020 Inventory. *Bennett v. Spear*, 520 U.S. 154, 170 (1997). As the 2017 Inventory demonstrates, absent the information EPA will obtain through the Reporting Rule, its 2020 Inventory will rely on the same "notably limited" data, JA___ (2017 Inventory at 3). Only if the Reporting Rule captures the full extent of mercury use, supply, and trade, as Congress mandated, will the 2020 Inventory include all the information TSCA requires EPA to publish. *See* JA___ (Final Rule, 83 Fed. Reg. at 30,055) ("These reporting requirements will help the Agency . . . prepare subsequent, triennial publications of the

inventory."). Because of the Rule's unlawful exemptions, NRDC is denied information to which, by law, it is entitled.

By the same measure, a favorable ruling from this Court will redress NRDC's injury. If EPA is compelled to require reporting consistent with TSCA, NRDC will obtain access to the information the Reporting Rule currently denies it.

NRDC therefore has standing to challenge the Reporting Rule.

II. The Component Exception contravenes TSCA's command that EPA require reporting on mercury-added products

Congress specifically directed EPA to collect data on "mercury-added products." 15 U.S.C. § 2607(b)(10)(D)(i); *see also id.* § 2607(b)(10)(B) (EPA "shall carry out . . . an inventory"). EPA's Component Exception nonsensically interprets the statutory term "mercury-added products" to *exclude* products containing "components" that are themselves "mercury-added product[s]." 40 C.F.R. § 713.7(b). That is plainly unlawful. Even if the phrase "mercury-added products" were ambiguous, which it is not, EPA's interpretation is unreasonable: it exempts component parts containing comparable amounts of mercury and presenting the same human health risks as products subject to the reporting requirements, thereby frustrating Congress's purpose.

A. The unambiguous meaning of "mercury-added products" forecloses EPA's interpretation

The Component Exception violates the plain text of TSCA and must be set aside. At *Chevron*'s first step, courts employ "traditional tools of statutory construction" to determine if "Congress had an intention on the precise question at issue" that "must be given effect." *Chevron*, 467 U.S. at 843 n.9. Those tools include the "[statutory] text, legislative history, structure, and purpose." *Li v. Renaud*, 654 F.3d 376, 382 (2d Cir. 2011) (quoting *Arizona Pub. Serv. Co. v. EPA*, 211 F.3d 1280, 1287 (D.C. Cir. 2000)). All these tools show that EPA's interpretation of the term "mercury-added products" is contrary to Congress's unambiguous intent.

1. The statute's plain text is clear: a mercury-added product is a product with mercury added to it

The plain text of TSCA forecloses EPA's attempt to exempt components from the reporting requirement. TSCA directs "any person who manufactures mercury or mercury-added products" to "make periodic reports" to EPA. 15 U.S.C. § 2607(b)(10)(D)(i). Under a plain understanding of the term, a "mercury-added product[]" is a product with mercury added to it—and that includes a product with a mercury-

added component part. EPA's claim to the contrary, that products that have mercury added to one of their "components" are not "mercury-added products," JA___ (Final Rule, 83 Fed. Reg. at 30,061), cannot be squared with the statutory text. Because statutory interpretation begins with "the assumption that the ordinary meaning of [a statute] accurately expresses the legislative purpose," *Milner v. Dep't of the Navy*, 562 U.S. 562, 569 (2011) (quoting *Park 'N Fly, Inc. v. Dollar Park & Fly, Inc.*, 469 U.S. 189, 194 (1985)), EPA's interpretation must be set aside.[7]

"Mercury-added," an adjectival phrase, means that mercury has been "add[ed]" to something—meaning it has been "join[ed] or unit[ed]" to something "so as to bring about an increase or improvement." Merriam-Webster's Dictionary, "Add," https://www.merriam-webster.com/dictionary/add. Accordingly, a product is "mercury-added" when mercury has been "joined or united" to the product "so as to bring about an . . . improvement."

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[7] That Congress did not define the term "mercury-added products" in TSCA does not make the phrase ambiguous. *See Ala. Power Co. v. U.S. EPA*, 40 F.3d 450, 454-55 & n.8 (D.C. Cir. 1994) (holding that the term "low NO_x burner technology" was unambiguous, notwithstanding that the term was not defined by Congress).

In many instances, a single "product" is comprised of any number of other products (i.e., "component" parts), joined together. A switch is a product, but so is the lamp in which it is used, and so is the car in which that lamp is used. A straightforward definition of the term "mercury-added products" encompasses all such products, whether incorporated within others or sold on their own.

EPA's contrary definition finds no support in TSCA's plain language. As EPA would have it, a mercury battery is a "mercury-added product" on its own, but when sold as part of a watch or a toy there is no longer any "mercury-added product" on which to report. Similarly, a mercury switch is a "mercury-added product" on its own, but when sold as part of a pump, thermostat, or vehicle there is no longer any "mercury-added product" on which to report. Yet it is the same battery or switch, containing the same amount of mercury, and thereby posing indistinguishable human health or environmental risks. EPA's sleight-of-hand is entirely at odds with the statute's plain meaning.

Reading the relevant provisions in context confirms what the plain text makes clear. *Gen. Dynamics Land Sys., Inc. v. Cline,* 540 U.S. 581, 596 (2004) ("cardinal rule" in statutory interpretation is "that

statutory language must be read in context since a phrase gathers meaning from the words around it" (quotation marks and alterations omitted)); *see Cohen v. JP Morgan Chase & Co.*, 498 F.3d 111, 117 (2d Cir. 2007). First, EPA's exemption of components from "mercury-added products" ignores Congress's directive to require reporting from "*any* person who manufactures mercury or mercury-added products." 15 U.S.C. § 2607(b)(10)(D)(i) (emphasis added). Congress's use of the word "any" in statutory text indicates its intent to reach all instances of the referent. *See, e.g.*, *Massachusetts v. EPA*, 549 U.S. 497, 528 (2007) (characterizing a statutory definition of "air pollutant" that included "'any air pollution agent or combination of such agents'" as "sweeping"); *see also HUD v. Rucker*, 535 U.S. 125, 131 (2002); *United States v. Gonzales*, 520 U.S. 1, 5 (1997). Congress's use of "any" in this statutory provision likewise evinces an intent to sweep broadly. *Cf. Ruggiero v. Cty. of Orange*, 467 F.3d 170, 175 (2d Cir. 2006) ("Congress made [the phrase at issue] even broader when it chose the expansive word 'any' to precede the list" (internal quotation marks omitted)). Indeed, EPA rejected a *de minimis* threshold for reporting because the statute's use of "any," the Agency reasoned, required reporting for any mercury use

in product manufacturing or industrial processes, regardless of quantity. *See* JA___ (Final Rule, 83 Fed. Reg. at 30,068); JA___ (Proposed Rule, 82 Fed Reg. at 49,574).

Second, EPA's Component Exception cannot be squared with the single exception for which Congress *did* provide. TSCA's reporting requirement, Congress specified, "shall not apply to a person engaged in the generation, handling, or management of mercury-containing waste, unless that person manufactures or recovers mercury in the management of that waste." 15 U.S.C. § 2607(b)(10)(D)(iii). Congress's decision to enumerate one exception and not others is strong evidence that Congress did not intend the reporting provision to admit of other exceptions. *See Andrus v. Glover Const. Co.*, 446 U.S. 608, 616-17 (1980) ("Where Congress explicitly enumerates certain exceptions to a general prohibition, additional exceptions are not to be implied, in the absence of evidence of a contrary legislative intent."); *Drozd v. INS*, 155 F.3d 81, 86-87 (2d Cir. 1998).

Third, EPA's interpretation is contrary to its clear statutory obligation to create an "inventory" of mercury use. 15 U.S.C. § 2607(b)(10)(B). Contrary to EPA's suggestion, an inventory does not

require simply a catalog of the "types" of uses of mercury. JA___ (Final Rule, 83 Fed. Reg. at 30,065); *see* JA___ (EPA Mercury; Reporting Requirements for Toxic Substances Control Act Mercury Inventory, Response to Comments at 16 (June 20, 2018)). Here, too, EPA's justification runs headlong into the plain meaning of the statutory text. An inventory is "an itemized list of current assets." Merriam-Webster's Dictionary, "Inventory," http://www.merriam-webster.com/dictionary/inventory; *see also, e.g.*, *Nat'l Prods., Inc. v. Aqua Box Prods., LLC*, No. 12-cv-605-RSM, 2013 WL 12114634, at *3 (W.D. Wash. Feb. 22, 2013) ("An inventory, by definition[,] is a *comprehensive* and *detailed* list of items that typically include[s] quantity, value and other identifying characteristics." (emphases added)). The TSCA mercury "inventory" thus requires substantial detail, including quantities; it cannot be satisfied with the mere "identification of the *types* of products where mercury is intentionally added," as EPA suggests. JA___ (Final Rule, 83 Fed. Reg. at 30,065). The identification of types of products is also contrary to Congress's instruction that EPA "shall . . . identify *any* manufacturing processes or

products that intentionally add mercury," not merely categories of such processes. 15 U.S.C. § 2607(b)(10)(C) (emphasis added).

Nor does identifying only types of products make any sense. After almost two decades of reporting, IMERC has identified the relevant product types, as EPA recognized in its Final Rule. *See* JA___ (Final Rule, 83 Fed. Reg. at 30,075-76, tbl.2). As EPA acknowledged repeatedly, what is lacking is a complete national accounting of *how much* mercury can be attributed to each product category, and how much mercury is imported through products versus manufactured domestically. *See* JA___ (Proposed Rule, 82 Fed. Reg. at 49,568); JA___ (Final Rule, 83 Fed. Reg. at 30,057). In its Proposed Rule, for instance, EPA noted it lacked data about *quantities* of mercury produced and used. *See* JA___ (Proposed Rule, 82 Fed. Reg. at 49,568). Nowhere did the Agency identify missing information about *types* of product uses. Rather, EPA noted that the "core elements to be covered in the mercury inventory" are "the amount of mercury used in the activities within the mercury market." JA___ (*id.* at 49,577).

Indeed, among the Agency's concerns was its inability to account for 26 of the 66 metric tons (almost 40 percent) of the mercury

manufactured and processed in 2013. JA___ (Proposed Rule, 82 Fed. Reg. at 49,568). Without comprehensive data about the quantities of mercury used, manufactured, and imported, EPA could not say anything in its 2017 Inventory about how those missing 26 tons had been used. Nor could EPA distinguish between mercury-added products that had been imported and mercury-added products produced domestically. *Id.* Data are necessary *not* to identify what types of products use mercury—which is well known—but instead to identify precisely where large quantities of unaccounted mercury are ending up.[8]

EPA's attempt to exclude from reporting entire categories of mercury manufacturing and importation is contrary to its obligation to carry out an "inventory." 15 U.S.C. § 2607(b)(10)(D)(i). A mercury inventory that ignores major categories of component uses and trade is no inventory at all.

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[8] Further reflecting EPA's recognition that an inventory requires quantities of mercury in particular uses and products, the 2017 Inventory, though woefully incomplete, provided estimated quantities of mercury associated with product categories and uses in manufacturing, not merely types of product and manufacturing uses. *See* JA___ (2017 Inventory at 7).

2. Reading "mercury-added products" in light of TSCA's purpose reinforces the plain meaning

Congress's purpose in enacting the mercury reporting provision as part of TSCA cuts sharply against EPA's interpretation of the statute. *See WPIX, Inc. v. IVI, Inc.*, 691 F.3d 275, 282 (2d Cir. 2012). Congress amended TSCA to fill the critical gaps in EPA's—and Congress's own—understanding of the sources of mercury. But EPA's interpretation of "mercury-added products" would result in a substantially incomplete inventory that deprives EPA and Congress of the total picture of mercury use, production, and trade. This in turn will ensure that EPA cannot recommend to Congress further actions to reduce mercury use based upon a full understanding of mercury use and supply—the very purpose for which Congress sought the inventory. *See* 15 U.S.C. § 2607(b)(10)(C)(ii).

A familiar example makes Congress's intent clear. Imagine that a fast-food restaurant menu distinguished between foods that were "sodium-added products" and those that were not. If Congress mandated that fast-food restaurants label all "sodium-added products" on their menus, to better inform customers, it would make no sense for the restaurant to *exclude* bacon cheeseburgers from the "sodium-added

products" list merely because sodium was added to the burger's component parts (the bacon, the cheese, the burger patty, and even the bun). From the customers' health perspective, what matters is whether sodium has been added—at any point—to the product they are consuming. *Cf.* 21 C.F.R. § 101.60(c)(2) (under Food and Drug Administration regulations, term "no sugar added" may only be used on food labeling if, *inter alia*, the "product does not contain an *ingredient* containing added sugars" (emphasis added)).

So, too, for Congress here. It does not matter, for Congress's purposes, whether mercury is added to a component or to the final product. In either event, the mercury will pose the same threat to human health and the environment: risking contamination of the air, soil, water, wildlife, or a human body. *See* JA___ (IMERC Comments at 3). If such a product is included in EPA's inventory, the Agency, Congress, and the public will have the information necessary to propose regulations to "achieve further reductions" in the use of such products. 15 U.S.C. § 2607(b)(10)(C)(ii). If the product is not included, the Agency, Congress, and the public will remain ignorant.

That ignorance has important real-world implications. Mercury-added products used as components within larger products make up a significant—although of course, unquantified—portion of all mercury-added products. *See, e.g.*, JA___ (Comment of Association of Global Automakers et al. at 3 (Jan. 11, 2018)) (noting that most uses of mercury in the automotive industry are in components). That is because many mercury-added products are intended to be component parts of a larger product: Batteries are made to power toys, watches, and hearing aids; lamps are frequently made to light screens in electronic products. Mercury-added components used in automobiles and an array of home appliances now enter the scrap-metal recycling stream when those products are recycled. JA___ (Steel Manufacturers Comments at 3). Excluding these and other components from EPA's inventory "deprive[s] the . . . recycling industry of the information they need to reduce mercury contamination in scrap metal." *Id.*

Indeed, EPA has recognized this problem in its own prior mercury regulations. In the Reporting Rule, EPA reasoned that the term "component" was "similar to the definition of 'article' in 40 C.F.R. § 704.3," which applies to reporting under Section 8(a) of TSCA. JA___

(Final Rule, 83 Fed. Reg. 30,061).[9] Yet EPA had previously recognized that exempting "articles" from parallel mercury regulations would undermine those regulations. Thus, a 2007 rule regulating the use of mercury to manufacture certain switches in motor vehicles, applied not only to the switches, but also to the manufacture and import of vehicles containing the mercury switches. Mercury Switches in Motor Vehicles; Proposed Significant New Use Rule, 71 Fed. Reg. 39,035, 39,043 (proposed July 11, 2006); *see* Mercury Switches in Motor Vehicles; Significant New Use Rule, 72 Fed. Reg. 56,903, 56,906-07 (Oct. 5, 2007) (eliminating articles exemption in final rule). Although mercury switches in automobiles are "articles," EPA recognized that exempting them from the rule would undermine the Agency's "primary concern": "potential exposures associated with the lifecycle of elemental mercury in certain motor vehicle switches." 72 Fed. Reg. at 56,907; *see also* Elemental Mercury Used in Flow Meters, Natural Gas Manometers,

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[9] An "article," by that definition, is a "manufactured item" that, *inter alia*, does not change in chemical composition during its end use. 40 C.F.R. § 704.3. For example, an automobile—containing various chemicals—is an "article." JA___ (TSCA CDR Fact Sheet at 3). Import of chemicals within articles is not generally subject to reporting under CDR. 40 C.F.R. § 711(10)(b).

and Pyrometers; Significant New Use Rule, 75 Fed. Reg. 42,330, 42,332 (July 21, 2010) (similarly rejecting articles exemption for rule governing manufacture of mercury-containing measuring devices). The same logic applies here.

3. Consistent usage in related enactments confirms the plain-text reading

Because the meaning of "mercury-added products" is clear, especially when read in the context of the statute as a whole, the Court "need proceed no further." *Louis Vuitton Malletier S.A. v. LY USA, Inc.*, 676 F.3d 83, 108 (2d Cir. 2012). Nevertheless, consistent usage of the term in other laws and enactments confirms the meaning of the term in TSCA. State laws, IMERC, and the Minamata Convention all use the phrase "mercury-added product" to include mercury-added components.

IMERC expressly defines "mercury-added product" to include products with a mercury-added component. JA___ (IMERC, Instructions, Mercury-added Product Notification Form at 1 (Aug. 2011)). IMERC requires reporting from manufacturers and importers of any "mercury-added product," which IMERC defines as including "a product with one or more components . . . that contains mercury." *Id.* In the amendments to TSCA, Congress specifically directed EPA to

"coordinate the reporting" for the mercury inventory with IMERC. 15 U.S.C. § 2607(b)(10)(D)(ii). It would be very odd if, despite that requirement and without saying so expressly, Congress intended "mercury-added products" to have a meaning in conflict with IMERC's definition.

The states participating in IMERC that regulate the use and sale of mercury within their borders likewise all define "mercury-added product" to include products with mercury added to components. For example, Louisiana law defines "mercury-added product" as:

> a product, commodity, chemical, or a product with a component that contains mercury or a mercury compound intentionally added to the product, commodity, chemical, or component in order to provide a specific characteristic, appearance, or quality or to perform a specific function or for any other reason.

La. Stat. Ann. § 30:2573(A)(6); *see* 23 R.I. Gen. Laws. § 23-24.9-3(10) (same); Vt. Stat. Ann. tit. 10, § 7102(9) (similar); Wash. Rev. Code § 70.95M.010(8) (similar); *see also* Conn. Gen. Stat. Ann. § 22a-613(2) ("'Mercury-added product' means a product, commodity, chemical or component of a product that contains mercury or a mercury compound that is intentionally added for any reason."); 410 Ill. Comp. Stat. 46/10 (similar); Wis. Stat. § 299.49(1)(a) (similar); N.H. Rev. Stat. Ann. § 149-

M:51(III) (similar); Minn. Stat. § 116.92(10) (similar). These laws uniformly define "mercury-added product" to include the components EPA would exclude.

Similarly, the Minamata Convention defines "mercury-added product" as "a product or product component that contains mercury or a mercury compound that was intentionally added." JA___ (Minamata Convention, art. 2, sec. f). This definition makes no distinction as to whether the component is sold separately or as part of a larger product. As EPA recognized, Congress intended TSCA's mercury reporting requirement to "provid[e] a body of information that will assist the United States in its implementation of the reporting requirements of the Minamata Convention." JA___ (Proposed Rule, 82 Fed. Reg. at 49,566); *see also* 162 Cong. Rec. at S3523 (statement of Sen. Leahy) (noting that "lack of data. . . would compromise our ability to comply with the Minamata Convention"). It strains credulity to think Congress intended the inventory and reporting requirements to compromise the United States' ability to comply with the Convention.[10]

[10] To comply with the Convention, the U.S. must (i) quantify reductions in the manufacture, import, and export of mercury-added products achieved through already-implemented mercury use-reduction

EPA's suggestion that the Minamata Convention's definition somehow supports the component exemption is misguided. *See* JA___ (Final Rule, 83 Fed. Reg at 30,061). Nothing about the Convention's use of the word "intentionally" suggests, as EPA assumes, that mercury can be "intentionally" added only to finished products directly, not via components. When a component is added to a product during assembly, the component is intentionally added. Mercury in that component is thus also intentionally added. *See also infra* pp. 53-56 (discussing manufacturers' knowledge of mercury in their components).

In short, EPA's definition is untethered to the plain language of TSCA, incompatible with the Act's purpose and the broader statutory scheme, and inconsistent with the definition used by all states, and most importantly IMERC, the entity with which Congress directed EPA to coordinate its reporting. There is no statutory ambiguity here: a

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strategies; (ii) determine whether *de minimis* levels have already been achieved; and (iii) where a *de minimis* level has not been achieved, implement additional mercury use-reduction measures. *See* JA___ (Minamata Convention art. 4, ¶ 2). EPA already acknowledged it lacks the data on switches and relays to reach a *de minimis* finding, and without data about their uses as components—a common use of these products—the United States will continue to lack a full factual basis for making such a finding. *See* JA___ (NRDC Comments at 3).

mercury-added product is a product with mercury added to it, and EPA's contorted interpretation to the contrary must be invalidated at *Chevron*'s first step.

B. Even if "mercury-added products" is ambiguous, EPA's interpretation is unreasonable

Even if the Court were to find ambiguity in the phrase "mercury-added products," EPA's interpretation is unreasonable and must be set aside. An agency interpretation reached "without regard" for the statute's core purposes is "unreasonable" under *Chevron*. *Chem. Mfrs. Ass'n v. EPA*, 217 F.3d 861, 867 (D.C. Cir. 2000). By excluding "components" from the Reporting Rule, EPA frustrates the very purpose of the statutory provision at issue: filling a gap in information about mercury's prevalence in the U.S. economy and the various sources from which it enters the environment and affects human health. *See supra* pp. 44-49.

The Agency's own example is the best evidence of the unreasonableness of its interpretation. In the preamble to the Final Rule, EPA offers the following justification as to why a manufacturer adding mercury-added components to a larger product is not intentionally adding mercury to that product:

> EPA is not convinced that all products that contain a component that is a mercury-added product should be viewed as "products that intentionally add mercury." For example, a domestic automobile manufacturer may not know that a component of the car contains mercury and arguably, therefore, has not intentionally added mercury to the car for the purposes of TSCA section 8(b)(10)(C)(i). Similarly, an automobile importer may not know that a component of the car contains mercury.

JA___ (Final Rule, 83 Fed. Reg. at 30,065).

This example is entirely divorced from reality. *See State Farm*, 463 U.S. at 43 (agency may not "offer[] an explanation for its decision that runs counter to the evidence before the agency"). Crucially, as EPA was aware, automobile manufacturers are required by two sets of state-law regulations to know the mercury content of their products' components. *See* JA___ (Proposed Rule, 82 Fed. Reg. at 49,575) ("[C]ompanies that report to IMERC for sales of . . . vehicles list lamps as a mercury-added component.").

First, manufacturers selling vehicles in IMERC states must notify those states, and IMERC, of the mercury-added components in their vehicles. *See, e.g.*, Vt. Stat. Ann. tit. 10, § 7104. Since 2001, more than 50 different vehicle manufacturers have reported to IMERC on mercury components in their trucks, automobiles, and recreation vehicles. *See*

JA___ (NEWMOA, Mercury-Added Products Database (no date)); ADD54, ADD58-62 (Lennett Decl. ¶¶29-30 & Ex. A). Eighteen of these IMERC reporters are automobile manufacturers, accounting for virtually all of the industry.[11] Recent auto manufacturers' reports identified mercury-added automobile headlamps, navigation systems, entertainment systems, and instrument panels as components within their vehicles. *See* ADD55-56, ADD63-78 (*id.* ¶¶ 32-37 & Exhs. B-G).

Second, labeling laws in Connecticut, Louisiana, Maine, Massachusetts, Minnesota, New York, Rhode Island, Vermont, and Washington "apply to any product that contains mercury, a mercury compound, or a mercury component." JA___ (IMERC Comments at 4). For automobiles, Vermont specifically requires that "a driver's side doorpost label applied by the manufacturer . . . list the mercury-added components that may be present on the vehicle." Vt. Stat. Ann. tit. 10, § 7106 (i)(2); *see also, e.g.*, Conn. Gen. Stat. Ann. § 22a-619(g)(3) (same,

[11] The automobile manufacturers that have reported to IMERC the mercury-added components in their vehicles include American Honda, Aston Martin, BMW, Fiat, Ford, General Motors, Hyundai, Jaguar / Land Rover, KIA, Mazda, Mercedes Benz, Mitsubishi, Nissan, Porsche, Subaru, Toyota, Volkswagen, and Volvo. They include both domestic manufacturers and importers. *See* ADD54-55 (Lennett Decl. ¶¶ 29-31).

in Connecticut). Other IMERC states follow Vermont's lead, and even allow compliance with Vermont law as a means of complying with their own state labeling regime. *See, e.g.*, Minn. Stat. § 116.92(3)(b).

Accordingly, manufacturers and importers are not only in a position to know, but are obligated by law to know, the mercury components in their products. Indeed, EPA's own rules under TSCA, promulgated over a decade ago, require vehicle manufacturers to know whether certain mercury-added switches will be used as components in their vehicles. *See* 72 Fed. Reg. at 56,906–07; *see also supra* pp. 47-49.

A requirement that manufacturers be responsible for knowing the material of their products' components is consistent with the "policy of the United States" that "the development of" adequate information about chemicals "should be the responsibility of those who manufacture and those who process such chemical substances and mixtures." 15 U.S.C. § 2601(b)(1). To the extent mercury importers do *not* know the mercury content of the products they import, *see* JA___ (Final Rule, 83 Fed. Reg. at 30,064), EPA's rule only further incentivizes such ignorance—and prevents the Agency, Congress, and the public from

becoming better informed.[12] That is precisely the opposite of Congress's intention. An interpretation "so at odds with [the statute's] structure and manifest purpose cannot be sustained." *Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 486 (2001).

EPA also attempts to justify its interpretation on the grounds that accounting for mercury within components would lead to double counting. That is, EPA asserts that it would receive data on the same lamp twice—once from the lamp manufacturer, and again from the automobile manufacturer that uses the lamp. That is not so. To begin, double-counting concerns are nonexistent for imported mercury-added products, as EPA acknowledges. JA___ (Final Rule, 83 Fed. Reg. at 30,065). Because the foreign manufacturer of a mercury-added component need not report to EPA, the only data EPA will receive about the product will be from the U.S.-based importer.

EPA's concerns about double-counting for products manufactured domestically are also readily resolved. EPA might receive reports from

[12] Indeed, EPA's Rule has the perverse effect of burdening those unlikely to know whether a product contains mercury: those who ultimately recycle the product at the end of its lifecycle. *See* JA___ (Steel Manufacturers Comments at 3).

both the U.S.-based manufacturer of a mercury lamp and the U.S.-based manufacturer of the car in which that lamp is used, but this does not present a significant obstacle to EPA's task of inventorying all mercury in U.S. commerce. IMERC easily accounts for such double-counting, and EPA could, too. IMERC has been successfully "addressing this issue for many years," without any "significant burden," simply by requiring manufacturers to report data with sufficient detail that IMERC can determine which components end up in which final products. JA___ (IMERC Comments at 3-4). EPA could likewise "address the double-counting issue by including in their data collection a requirement that companies identify where their products' component parts come from." JA___ (*id.* at 4).

EPA has failed to offer any other sensible justification for its interpretation. The Agency suggests that it can comply with the statutory mandate by *guessing* the amount of mercury the Component Exception hides from its view. That claim is unsupported and unreasonable. Of course, EPA can guess at the relevant quantity data relating to mercury-added products, but it can make such guesses now, too. The 2017 Inventory reveals just how ineffective such guesses are.

Congress directed EPA to "carry out . . . an inventory," 15 U.S.C. § 2607(b)(10)(B), not a series of conjectures. *See supra* pp. 41-42.

EPA cannot even estimate the quantities of mercury imported as component parts because it has no factual basis to do so—the manufacturers are not U.S.-based persons subject to TSCA's reporting requirement. Although the Agency admits it "cannot directly account for amounts of mercury" within imported products containing mercury components, it contends that it could identify types of imported components based upon domestic data. JA___ (Final Rule, 83 Fed. Reg. at 30,065). But EPA will not be able to extrapolate from domestic data to draw inferences about imports because, as the Agency acknowledged, it lacks data on similarities and differences between domestic product manufacturing and imports. *See* JA___ (*id.* at 30,057). EPA's claim that it will be able to identify "the types of imported assembled products that may contain such components," JA___ (*id.* at 30,065), thus strains credulity.

Nor is it the case that, "even without receiving reports from manufactures of assembled products," EPA will be able to "glean information about types of mercury-added products" from the reporting

by manufacturers of components of those products. *Id.* EPA does not explain how it could determine, for example, whether mercury batteries are ending up in watches or, instead, in children's toys, particularly in the case of imports.

In sum, even if the Court determines that TSCA's mercury-inventory requirement is ambiguous, EPA has failed to offer anything approaching a reasoned explanation for its decision to exempt "components" from the Mercury Reporting Rule. The Rule must be set aside. *See, e.g.*, *Whitman*, 531 U.S. at 486.

III. The CDR Exception is contrary to TSCA and the product of irrational decision making

The CDR Exception is contrary to TSCA's requirement that "any person" who manufactures mercury must submit information for the mercury inventory. 15 U.S.C. § 2607(b)(10)(D)(i). By exempting three of the nation's largest domestic mercury manufacturers, EPA will deprive itself of the data necessary to compile an accurate mercury inventory. The Exception cannot be justified as an exercise of EPA's limited discretion to avoid unnecessary and duplicative reporting. The Exception does not eliminate "reporting which is unnecessary or

duplicative," and certainly does not do so "to the extent feasible." 15 U.S.C. § 2607(a)(5). It is thus contrary to law.

Further, the Reporting Rule's CDR Exception is the product of EPA's arbitrary and capricious decision making and must therefore be set aside.[13] EPA adopted the Exception based on an irrational analysis that privileged trivial avoided costs over substantial forgone benefits. EPA also failed to even consider an alternative approach: exempting CDR reporters from the CDR rule, while requiring them to report under this Rule. Whether because of EPA's arbitrary decision making or because the CDR Exception conflicts with Congress's statutory directives, the Exception cannot stand.

A. The CDR Exception deprives EPA of data necessary to prepare an accurate inventory and exceeds EPA's limited discretion to avoid duplicative reporting

The Act does not authorize EPA to exempt CDR reporters from the mercury inventory. Rather, the Act requires "*any* person who

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[13] Because EPA's decision making process underlying the CDR Exception is invalid under *State Farm*, the Court need not reach the question of whether the Exception is permissible under the *Chevron* standard. *See Catskill Mountains Chapter of Trout Unlimited, Inc. v. EPA*, 846 F.3d 492, 522 (2d Cir. 2017), *cert. denied sub nom. New York v. EPA*, 138 S. Ct. 1164 (2018), *and cert. denied sub nom. Riverkeeper, Inc. v. EPA*, 138 S. Ct. 1165 (2018); *Encino Motorcars LLC v. Navarro*, 136 S. Ct. 2117, 2125 (2016).

manufactures mercury . . . or otherwise intentionally uses mercury in a manufacturing process" to make "periodic reports" to EPA. 15 U.S.C. § 2607(b)(10)(D)(i) (emphasis added). Yet the Reporting Rule exempts from these requirements those persons who submit reports through the separate CDR program, 40 C.F.R. § 713.9(a). This exemption prevents EPA from producing an accurate mercury inventory and is thus contrary to TSCA.

The CDR Exception exempts three of the nation's largest manufacturers and importers of mercury (and mercury compounds)—those who manufacture or import more than 2,500 pounds of mercury or 25,000 pounds of mercury compounds—from reporting to EPA the amount of mercury they manufacture, import, or export. 40 C.F.R. § 713.9(a). The Reporting Rule requires only that they report the amount of mercury they store and distribute in commerce. *Id.* EPA justifies this exception on the grounds that it can "obtain comparable data" from the separate CDR program. JA___ (Final Rule, 83 Fed. Reg. at 30,063).

That is not so. A simple but fundamental difference between the two programs means that the CDR program cannot provide comparable

substitute data for purposes of the mercury inventory: The CDR program requires reporting on a different and delayed four-year cycle. *See* 40 C.F.R. § 711.20. The resulting discrepancy will render the CDR data all but useless for EPA's mercury inventories. For example, when EPA prepares its next inventory in 2020, as required by TSCA, *see* 15 U.S.C. § 2607(b)(10)(B), it will be relying on data submitted by manufacturers and importers in 2019 under the Mercury Reporting Rule for the 2018 calendar year, *see* 40 C.F.R. § 713.17. Yet the most recent data available for CDR reporters, who EPA has exempted from the Mercury Reporting Rule, will have been submitted in 2016, covering calendar year 2015. *See id.* § 711.20; *id.* § 711.15. Thus, the data on which EPA's 2020 inventory will necessarily rely for these manufacturers and importers will be three years older.[14] This is a serious problem, because the amount of mercury manufactured, imported, and exported can vary significantly from year to year. *See,*

[14] The age of the CDR data will be an ongoing issue, since the CDR program requires reporting on a four-year cycle and the Reporting Rule on a three-year cycle. *See* 40 C.F.R. § 711.20; *id.* § 713.17. Reporting for the two programs will coincide only once every 12 years (for one out of every four triennial inventories).

e.g., JA___ (2009 Report at tbl.3-1) (showing compound imports decreased more than 40% from 2007 to 2008).

This data gap will prevent EPA from carrying out the task Congress assigned it. Because of the CDR Exception, EPA will not be able to accurately sum all the production and import data to determine the 2018 mercury supply as Congress sought. Nor will EPA be able to determine mercury supply trends because of missing 2016-2018 data from large suppliers. EPA will also be unable to quantify the difference between domestic supply and demand for calendar year 2018, because it will be missing a substantial piece of the supply data (from the CDR reporters). *See* JA___ (Comment of Natural Resources Defense Council at 4 (Jan. 11, 2018) ("NRDC Comments")). Quantifying the difference between supply and demand is critical for determining the existence of and the reasons for potential ongoing data gaps that should be addressed. *See* JA___ (Proposed Rule, 82 Fed. Reg. at 49,568) (noting data gaps arising from inadequate information about supply of and demand for bulk mercury). In this way, the data required under the Reporting Rule from CDR reporters is necessary for EPA to create an "inventory" of U.S. mercury supply, use, and trade. EPA's failure to

require this critical data on the quantities of mercury manufactured and imported under the Reporting Rule in the relevant calendar years is contrary to TSCA.

The Reporting Rule's requirements for non-CDR reporters reflect EPA's awareness that reliable information about precise quantities imported, manufactured, exported, stored, and distributed is essential if EPA is to produce a comprehensive "inventory." *See* 40 C.F.R. §713.9(b). Thus, although the CDR regime requires submission of some overlapping data, *see, e.g.*, *id.* § 711.15(b)(3)(iii) (requiring submission of total annual volume of each chemical manufactured or imported per site), there is nothing "unnecessary" about the data that would be submitted under the Reporting Rule were CDR Reporters required to participate fully.

Accordingly, the CDR Exception cannot be justified—as EPA attempts to do, *see* JA___ (Final Rule, 83 Fed. Reg. at 30,065)—as an effort to avoid "duplicative" reporting. 15 U.S.C. § 2607(a)(5). The two programs are not duplicative because they have different reporting schedules and the Congress required EPA to collect up-to-date data on a three-year cycle.

In any event, Congress permitted EPA to avoid duplicative reporting only "to the extent feasible." *Id.* EPA cannot reasonably assert that an exception that makes impossible the Agency's statutory task—compiling a mercury inventory that will inform recommendations for further mercury regulation—is "feasible." *See supra* pp. 41-42 (discussing meaning of "inventory"); *cf.* JA___ (2017 Inventory at 3) (noting Agency's inability to make recommendations based on inadequate 2017 Inventory).

B. EPA adopted the CDR Exception based on a flawed analysis

Even if the CDR Exception were not contrary to TSCA, the Exception would still be unlawful because EPA's only justification for it is an arbitrary and irrational balancing of costs and benefits. "One of the basic procedural requirements of administrative rulemaking is that an agency must give adequate reasons for its decisions." *Encino Motorcars*, 136 S. Ct. at 2125. Accordingly, "the agency 'must examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made.'" *Id.* (quoting *State Farm*, 463 U.S. at 43); *see Nat. Res. Def. Council*, 808 F.3d at 569. In adopting the CDR Exception, EPA relied on

an irrational, arbitrary justification: it unduly accounted for trivial cost savings from the exception while ignoring the substantial benefits that will be lost.

To be sure, the CDR Reporters are not, as EPA touts, "categorically exempt." *Id.* They must still report, under the Reporting Rule, the amounts of mercury they "store" and "distribute" in commerce. 40 C.F.R. § 713.9(a). But that the CDR Exception is only partial only exacerbates its irrationality. The exception sacrifices the Reporting Rule's benefits for all but nothing: it prevents EPA from obtaining critical information—about the amount of mercury and mercury compounds entering commerce through manufacture and imports—without even significantly reducing the already minimal costs of compliance on CDR reporters.

Those costs are truly minimal. Only three companies are likely to be subject to the CDR Exception. *See* JA___ (EPA, Supporting Statement for a Request for OMB Review under the Paperwork Reduction Act at 34-35 & tbl.12); JA___ (EPA Final Economic Analysis at 2-5); JA___ (NRDC Comments at 4 & n.16). According to EPA, each CDR reporter is expected to save about $2,000 in the initial reporting

year, and approximately $1,800 per year in each following year, relative to the costs that would be incurred from submitting complete data under the Mercury Reporting Rule. JA___ (EPA Final Economic Analysis at 3-9, 3-11).[15] The *total* cost savings attributable to the CDR Exception in the initial reporting year, therefore, will be $6,070.[16] And the costs avoided by exempting CDR reporters from the specific data points required of all other reporters—the quantities of mercury manufactured, imported, and exported, *see* 40 C.F.R. § 713.9—are even more miniscule.[17] The avoided costs are particularly trivial because

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[15] EPA estimates the total costs of complying with the Mercury Reporting Rule for CDR reporters as $7,391 for the initial reporting year and total costs for "other"—i.e. persons not subject to CDR reporting—as $9,482. *See* JA___ (EPA Final Economic Analysis at 3-9). In subsequent reporting years, EPA estimates CDR reporters will have total annual costs of $7,014 and non-CDR reporters will have total annual costs of $8,805. JA___ (*id.* at 3-11).

[16] *See* JA___ (EPA Final Economic Analysis at 3-19). For the two CDR reporters reporting both elemental mercury and mercury compounds, savings will be $2,091 each (for a total of $4,182); for the one CDR reporter reporting only mercury compound use, savings will be $1,888.

[17] For example, EPA estimates that each CDR reporter will save $101.68 by not reporting the amount of elemental mercury it imports, and $101.68 by not reporting the amount of mercury compounds it imports. *See* JA___ (EPA Final Economic Analysis at 3-6, 3-8) (estimating difference between cost to report country of origin of

CDR reporters are, by definition, large mercury-producing companies.[18] By comparison, EPA estimates that the total cost of compliance for *all* reporters in the first year will be $5,826,570. JA___ (EPA Final Economic Analysis at 3-18). Thus, for little more than one-tenth of one percent of the total cost of the program—which would be borne by three of the largest mercury suppliers subject to the program—EPA would forsake substantially all the benefits of having complete, accurate data.

Moreover, even assuming such cost savings warranted a regulatory response, EPA never considered flipping the exemption—that is, requiring reporting of mercury production data under the more timely Mercury Reporting Rule, and eliminating the comparable data request under CDR. This approach would preserve the integrity and efficacy of the mercury inventory, while addressing the limited duplication EPA claims exists. NRDC expressly recommended this

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imports (for CDR reporters) and country of origin plus volume (for all others)).

[18] EPA thus cannot rely, *see* JA___ (Final Rule, 83 Fed. Reg. at 30,063), on 15 U.S.C. § 2607(a)(5)(B), which directs the Agency, "to the extent feasible," to minimize the costs of compliance "on small manufacturers."

course of action as a last resort, JA___ (NRDC Comments at 5), to which EPA never responded.

Because the CDR reporters are three of the largest mercury and mercury-compound manufacturers, an inventory lacking data on their activities will be critically incomplete. Two of the CDR reporters manufactured or imported 158 tons of mercury compounds in one calendar year. *See* JA___ (2017 Inventory at 9). And one of the CDR reporters is the largest producer of elemental mercury in the country. *See* JA___ (NRDC Comments at 4 n.14). Even if these numbers are imperfect, they reflect the magnitude of the data gap that the CDR Exception would create. Without "actual data," EPA will be unable to "prioritize and tailor its regulatory decisions," which will undermine "efficient allocation of EPA's and society's resources—particularly important for this persistent, bioaccumulative neurotoxicant chemical." JA___ (EPA Final Economic Analysis at 6-1).

In adopting the CDR Exception, EPA did not grapple with these deficiencies. Rather, it simply asserted that it "is able to obtain comparable data via . . . [the] CDR program." JA___ (Final Rule, 83 Fed. Reg. at 30,063); *see id.* ("[T]he Agency believes supplementing data

reported through this rule with data from CDR . . . creates a totality of available data that will provide an adequate basis to observe long-term trends in mercury supply, use, and trade.").

This is a bald and unsupported assertion, not a reasoned analysis. EPA never explains how it could fill the inevitable gaps that will result from relying on three-year-old data from three of the largest mercury producers. Conclusory, *ipse dixit* reasoning of this nature is inconsistent with the APA's demand of rational decision making. *See, e.g.*, *Nat. Res. Def. Council v. EPA*, 658 F.3d 200, 216 (2d Cir. 2011) ("In order to ensure that an agency's decision has not been arbitrary, we require the agency to have identified and explained the reasoned basis for its decision." (quoting *Nat. Res. Def. Council v. EPA*, 571 F.3d 1245, 1267 (D.C. Cir. 2009))). Further, where "an agency decides to rely on a cost-benefit analysis as part of its rulemaking, a serious flaw undermining that analysis can render the rule unreasonable." *Nat'l Ass'n of Home Builders v. EPA*, 682 F.3d 1032, 1040 (D.C. Cir. 2012). To forgo such substantial benefits to save one-tenth of one percent of a rule's costs is quintessentially arbitrary decision making that cannot support an agency's rule. *See City of Portland v. EPA*, 507 F.3d 706, 713 (D.C. Cir.

2007) (noting that "we will [not] tolerate rules based on arbitrary and capricious cost-benefit analyses"); *Owner–Operator Indep. Drivers Ass'n v. Fed. Motor Carrier Safety Admin.*, 494 F.3d 188, 206 (D.C. Cir. 2007) (vacating regulatory provisions because the cost-benefit analysis supporting them was based on an unexplained methodology). TSCA does not allow EPA to rely on an unreasonable assessment of costs and benefits, as EPA attempts to do here.

The CDR Exception is therefore not only in contravention of the statute, but also the product of EPA's arbitrary decision making. For either reason, it must be set aside.

CONCLUSION

For the foregoing reasons, NRDC asks the Court to grant the petition for review; hold unlawful and set aside the two provisions of the Mercury Reporting Rule challenged here, 40 C.F.R. § 713.7(b)(2)-(3) and 40 C.F.R. § 713.9; remand to the Agency with instructions to carry out its statutorily mandated task of compiling a complete mercury inventory; and order EPA to collect all of the information required by TSCA to inform EPA's 2020 mercury inventory and all future inventories.

Dated: January 11, 2019

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(g), I certify that this Opening Brief complies with the type-volume limitations of Second Circuit Rule 32.1(a)(4)(A) because it contains 13,787 words, excluding parts of the document exempted by Rule 32(f).

Dated: January 11, 2019

/s/ *Gabriel Daly*
Gabriel Daly

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing brief with the Clerk of the Court for the United States Court of Appeals for the Second Circuit by using the appellate CM/ECF system on January 11, 2019.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ *Gabriel Daly*
Gabriel Daly

ADDENDUM

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cal substance or mixture or an article containing a chemical substance or mixture, the relief authorized by paragraph (1) may include the issuance of a mandatory order requiring (A) in the case of purchasers of such substance, mixture, or article known to the defendant, notification to such purchasers of the risk associated with it; (B) public notice of such risk; (C) recall; (D) the replacement or repurchase of such substance, mixture, or article; or (E) any combination of the actions described in the preceding clauses.

(3) In the case of an action under subsection (a) against a chemical substance, mixture, or article, such substance, mixture, or article may be proceeded against by process of libel for its seizure and condemnation. Proceedings in such an action shall conform as nearly as possible to proceedings in rem in admiralty.

(c) Venue and consolidation

(1)(A) An action under subsection (a) against a person who manufactures, processes, or distributes a chemical substance or mixture or an article containing a chemical substance or mixture may be brought in the United States District Court for the District of Columbia or for any judicial district in which any of the defendants is found, resides, or transacts business; and process in such an action may be served on a defendant in any other district in which such defendant resides or may be found. An action under subsection (a) against a chemical substance, mixture, or article may be brought in any United States district court within the jurisdiction of which the substance, mixture, or article is found.

(B) In determining the judicial district in which an action may be brought under subsection (a) in instances in which such action may be brought in more than one judicial district, the Administrator shall take into account the convenience of the parties.

(C) Subpeonas[1] requiring attendance of witnesses in an action brought under subsection (a) may be served in any judicial district.

(2) Whenever proceedings under subsection (a) involving identical chemical substances, mixtures, or articles are pending in courts in two or more judicial districts, they shall be consolidated for trial by order of any such court upon application reasonably made by any party in interest, upon notice to all parties in interest.

(d) Action under section 2605

Where appropriate, concurrently with the filing of an action under subsection (a) or as soon thereafter as may be practicable, the Administrator shall initiate a proceeding for the promulgation of a rule under section 2605(a) of this title.

(e) Representation

Notwithstanding any other provision of law, in any action under subsection (a), the Administrator may direct attorneys of the Environmental Protection Agency to appear and represent the Administrator in such an action.

(f) "Imminently hazardous chemical substance or mixture" defined

For the purposes of subsection (a), the term "imminently hazardous chemical substance or mixture" means a chemical substance or mixture which presents an imminent and unreasonable risk of serious or widespread injury to health or the environment, without consideration of costs or other nonrisk factors. Such a risk to health or the environment shall be considered imminent if it is shown that the manufacture, processing, distribution in commerce, use, or disposal of the chemical substance or mixture, or that any combination of such activities, is likely to result in such injury to health or the environment before a final rule under section 2605 of this title can protect against such risk.

(Pub. L. 94–469, title I, §7, Oct. 11, 1976, 90 Stat. 2026; renumbered title I, Pub. L. 99–519, §3(c)(1), Oct. 22, 1986, 100 Stat. 2989; amended Pub. L. 102–550, title X, §1021(b)(1), Oct. 28, 1992, 106 Stat. 3923; Pub. L. 114–182, title I, §§7, 19(f), June 22, 2016, 130 Stat. 470, 507.)

AMENDMENTS

2016—Subsec. (a)(1). Pub. L. 114–182, §19(f)(1), in concluding provisions, substituted "a determination under section 2604 or 2605 of this title, a rule under section 2603, 2604, or 2605 of this title or subchapter IV, an order under section 2603, 2604, or 2605 of this title or subchapter IV, or a consent agreement under section 2603 of this title" for "a rule under section 2603 of this title, 2604 of this title, 2605 of this title, or subchapter IV or an order under section 2604 of this title or subchapter IV".

Subsec. (a)(2). Pub. L. 114–182, §19(f)(2), substituted "section 2605(d)(3)(A)(i)" for "section 2605(d)(2)(A)(i)".

Subsec. (b)(1). Pub. L. 114–182, §7(1), inserted "(as identified by the Administrator without consideration of costs or other nonrisk factors)" after "from the unreasonable risk".

Subsec. (f). Pub. L. 114–182, §7(2), inserted ", without consideration of costs or other nonrisk factors" after "widespread injury to health or the environment".

1992—Subsec. (a)(1). Pub. L. 102–550 substituted "section 2603 of this title, 2604 of this title, 2605 of this title, or subchapter IV" for "section 2603, 2604, or 2605 of this title" in last sentence.

Pub. L. 102–550, which directed the insertion of "or subchapter IV" after "2604", was executed by making the insertion after "2604" the second time appearing in last sentence, to reflect the probable intent of Congress.

EFFECTIVE DATE

Section effective Jan. 1, 1977, see section 31 of Pub. L. 94–469, set out as a note under section 2601 of this title.

§ 2607. Reporting and retention of information

(a) Reports

(1) The Administrator shall promulgate rules under which—

(A) each person (other than a small manufacturer or processor) who manufactures or processes or proposes to manufacture or process a chemical substance (other than a chemical substance described in subparagraph (B)(ii)) shall maintain such records, and shall submit to the Administrator such reports, as the Administrator may reasonably require, and

(B) each person (other than a small manufacturer or processor) who manufactures or processes or proposes to manufacture or process—

(i) a mixture, or

[1] So in original. Probably should be "Subpoenas".

(ii) a chemical substance in small quantities (as defined by the Administrator by rule) solely for purposes of scientific experimentation or analysis or chemical research on, or analysis of, such substance or another substance, including any such research or analysis for the development of a product,

shall maintain records and submit to the Administrator reports but only to the extent the Administrator determines the maintenance of records or submission of reports, or both, is necessary for the effective enforcement of this chapter.

The Administrator may not require in a rule promulgated under this paragraph the maintenance of records or the submission of reports with respect to changes in the proportions of the components of a mixture unless the Administrator finds that the maintenance of such records or the submission of such reports, or both, is necessary for the effective enforcement of this chapter. For purposes of the compilation of the list of chemical substances required under subsection (b), the Administrator shall promulgate rules pursuant to this subsection not later than 180 days after January 1, 1977.

(2) The Administrator may require under paragraph (1) maintenance of records and reporting with respect to the following insofar as known to the person making the report or insofar as reasonably ascertainable:

(A) The common or trade name, the chemical identity, and the molecular structure of each chemical substance or mixture for which such a report is required.

(B) The categories or proposed categories of use of each such substance or mixture.

(C) The total amount of each such substance and mixture manufactured or processed, reasonable estimates of the total amount to be manufactured or processed, the amount manufactured or processed for each of its categories of use, and reasonable estimates of the amount to be manufactured or processed for each of its categories of use or proposed categories of use.

(D) A description of the byproducts resulting from the manufacture, processing, use, or disposal of each such substance or mixture.

(E) All existing information concerning the environmental and health effects of such substance or mixture.

(F) The number of individuals exposed, and reasonable estimates of the number who will be exposed, to such substance or mixture in their places of employment and the duration of such exposure.

(G) In the initial report under paragraph (1) on such substance or mixture, the manner or method of its disposal, and in any subsequent report on such substance or mixture, any change in such manner or method.

(3)(A)(i) The Administrator may by rule require a small manufacturer or processor of a chemical substance to submit to the Administrator such information respecting the chemical substance as the Administrator may require for publication of the first list of chemical substances required by subsection (b).

(ii) The Administrator may by rule require a small manufacturer or processor of a chemical substance or mixture—

(I) subject to a rule proposed or promulgated under section 2603, 2604(b)(4), or 2605 of this title,,[1] an order in effect under section 2603 or 2604(e) of this title, or a consent agreement under section 2603 of this title, or

(II) with respect to which relief has been granted pursuant to a civil action brought under section 2604 or 2606 of this title,

to maintain such records on such substance or mixture, and to submit to the Administrator such reports on such substance or mixture, as the Administrator may reasonably require. A rule under this clause requiring reporting may require reporting with respect to the matters referred to in paragraph (2).

(B) The Administrator, after consultation with the Administrator of the Small Business Administration, shall by rule prescribe standards for determining the manufacturers and processors which qualify as small manufacturers and processors for purposes of this paragraph and paragraph (1).

(C) Not later than 180 days after June 22, 2016, and not less frequently than once every 10 years thereafter, the Administrator, after consultation with the Administrator of the Small Business Administration, shall—

(i) review the adequacy of the standards prescribed under subparagraph (B); and

(ii) after providing public notice and an opportunity for comment, make a determination as to whether revision of the standards is warranted.

(4) CONTENTS.—The rules promulgated pursuant to paragraph (1)—

(A) may impose differing reporting and recordkeeping requirements on manufacturers and processors; and

(B) shall include the level of detail necessary to be reported, including the manner by which use and exposure information may be reported.

(5) ADMINISTRATION.—In carrying out this section, the Administrator shall, to the extent feasible—

(A) not require reporting which is unnecessary or duplicative;

(B) minimize the cost of compliance with this section and the rules issued thereunder on small manufacturers and processors; and

(C) apply any reporting obligations to those persons likely to have information relevant to the effective implementation of this subchapter.

(6) NEGOTIATED RULEMAKING.—(A) The Administrator shall enter into a negotiated rulemaking pursuant to subchapter III of chapter 5 of title 5 to develop and publish, not later than 3 years after June 22, 2016, a proposed rule providing for limiting the reporting requirements, under this subsection, for manufacturers of any inorganic byproducts, when such byproducts, whether by the byproduct manufacturer or by any other person, are subsequently recycled, reused, or reprocessed.

(B) Not later than 3 and one-half years after June 22, 2016, the Administrator shall publish a

[1] So in original.

final rule resulting from such negotiated rulemaking.

(b) Inventory

(1) The Administrator shall compile, keep current, and publish a list of each chemical substance which is manufactured or processed in the United States. Such list shall at least include each chemical substance which any person reports, under section 2604 of this title or subsection (a) of this section, is manufactured or processed in the United States. Such list may not include any chemical substance which was not manufactured or processed in the United States within three years before the effective date of the rules promulgated pursuant to the last sentence of subsection (a)(1). In the case of a chemical substance for which a notice is submitted in accordance with section 2604 of this title, such chemical substance shall be included in such list as of the earliest date (as determined by the Administrator) on which such substance was manufactured or processed in the United States. The Administrator shall first publish such a list not later than 315 days after January 1, 1977. The Administrator shall not include in such list any chemical substance which is manufactured or processed only in small quantities (as defined by the Administrator by rule) solely for purposes of scientific experimentation or analysis or chemical research on, or analysis of, such substance or another substance, including such research or analysis for the development of a product.

(2) To the extent consistent with the purposes of this chapter, the Administrator may, in lieu of listing, pursuant to paragraph (1), a chemical substance individually, list a category of chemical substances in which such substance is included.

(3) NOMENCLATURE.—

(A) IN GENERAL.—In carrying out paragraph (1), the Administrator shall—

(i) maintain the use of Class 2 nomenclature in use on June 22, 2016;

(ii) maintain the use of the Soap and Detergent Association Nomenclature System, published in March 1978 by the Administrator in section 1 of addendum III of the document entitled ''Candidate List of Chemical Substances'', and further described in the appendix A of volume I of the 1985 edition of the Toxic Substances Control Act Substances Inventory (EPA Document No. EPA–560/7–85–002a); and

(iii) treat the individual members of the categories of chemical substances identified by the Administrator as statutory mixtures, as defined in Inventory descriptions established by the Administrator, as being included on the list established under paragraph (1).

(B) MULTIPLE NOMENCLATURE LISTINGS.—If a manufacturer or processor demonstrates to the Administrator that a chemical substance appears multiple times on the list published under paragraph (1) under different CAS numbers, the Administrator may recognize the multiple listings as a single chemical substance.

(4) CHEMICAL SUBSTANCES IN COMMERCE.—

(A) RULES.—

(i) IN GENERAL.—Not later than 1 year after June 22, 2016, the Administrator, by rule, shall require manufacturers, and may require processors, subject to the limitations under subsection (a)(5)(A), to notify the Administrator, by not later than 180 days after the date on which the final rule is published in the Federal Register, of each chemical substance on the list published under paragraph (1) that the manufacturer or processor, as applicable, has manufactured or processed for a nonexempt commercial purpose during the 10-year period ending on the day before June 22, 2016.

(ii) ACTIVE SUBSTANCES.—The Administrator shall designate chemical substances for which notices are received under clause (i) to be active substances on the list published under paragraph (1).

(iii) INACTIVE SUBSTANCES.—The Administrator shall designate chemical substances for which no notices are received under clause (i) to be inactive substances on the list published under paragraph (1).

(iv) LIMITATION.—No chemical substance on the list published under paragraph (1) shall be removed from such list by reason of the implementation of this subparagraph, or be subject to section 2604(a)(1)(A)(i) of this title by reason of a change to active status under paragraph (5)(B).

(B) CONFIDENTIAL CHEMICAL SUBSTANCES.—In promulgating a rule under subparagraph (A), the Administrator shall—

(i) maintain the list under paragraph (1), which shall include a confidential portion and a nonconfidential portion consistent with this section and section 2613 of this title;

(ii) require any manufacturer or processor of a chemical substance on the confidential portion of the list published under paragraph (1) that seeks to maintain an existing claim for protection against disclosure of the specific chemical identity of the chemical substance as confidential pursuant to section 2613 of this title to submit a notice under subparagraph (A) that includes such request;

(iii) require the substantiation of those claims pursuant to section 2613 of this title and in accordance with the review plan described in subparagraph (C); and

(iv) move any active chemical substance for which no request was received to maintain an existing claim for protection against disclosure of the specific chemical identity of the chemical substance as confidential from the confidential portion of the list published under paragraph (1) to the nonconfidential portion of that list.

(C) REVIEW PLAN.—Not later than 1 year after the date on which the Administrator compiles the initial list of active substances pursuant to subparagraph (A), the Administrator shall promulgate a rule that establishes a plan to review all claims to protect the specific chemical identities of chemical substances on the confidential portion of the list published under paragraph (1) that are asserted pursuant to subparagraph (B).

(D) REQUIREMENTS OF REVIEW PLAN.—In establishing the review plan under subparagraph (C), the Administrator shall—

(i) require, at a time specified by the Administrator, all manufacturers or processors asserting claims under subparagraph (B) to substantiate the claim, in accordance with section 2613 of this title, unless the manufacturer or processor has substantiated the claim in a submission made to the Administrator during the 5-year period ending on the last day of the of the time period specified by the Administrator; and

(ii) in accordance with section 2613 of this title—

(I) review each substantiation—

(aa) submitted pursuant to clause (i) to determine if the claim qualifies for protection from disclosure; and

(bb) submitted previously by a manufacturer or processor and relied on in lieu of the substantiation required pursuant to clause (i), if the substantiation has not been previously reviewed by the Administrator, to determine if the claim warrants protection from disclosure;

(II) approve, approve in part and deny in part, or deny each claim; and

(III) except as provided in this section and section 2613 of this title, protect from disclosure information for which the Administrator approves such a claim for a period of 10 years, unless, prior to the expiration of the period—

(aa) the person notifies the Administrator that the person is withdrawing the claim, in which case the Administrator shall not protect the information from disclosure; or

(bb) the Administrator otherwise becomes aware that the information does not qualify for protection from disclosure, in which case the Administrator shall take the actions described in section 2613(g)(2) of this title.

(E) TIMELINE FOR COMPLETION OF REVIEWS.—

(i) IN GENERAL.—The Administrator shall implement the review plan so as to complete reviews of all claims specified in subparagraph (C) not later than 5 years after the date on which the Administrator compiles the initial list of active substances pursuant to subparagraph (A).

(ii) CONSIDERATIONS.—

(I) IN GENERAL.—The Administrator may extend the deadline for completion of the reviews for not more than 2 additional years, after an adequate public justification, if the Administrator determines that the extension is necessary based on the number of claims needing review and the available resources.

(II) ANNUAL REVIEW GOAL AND RESULTS.—At the beginning of each year, the Administrator shall publish an annual goal for reviews and the number of reviews completed in the prior year.

(5) ACTIVE AND INACTIVE SUBSTANCES.—

(A) IN GENERAL.—The Administrator shall keep designations of active substances and inactive substances on the list published under paragraph (1) current.

(B) CHANGE TO ACTIVE STATUS.—

(i) IN GENERAL.—Any person that intends to manufacture or process for a nonexempt commercial purpose a chemical substance that is designated as an inactive substance shall notify the Administrator before the date on which the inactive substance is manufactured or processed.

(ii) CONFIDENTIAL CHEMICAL IDENTITY.—If a person submitting a notice under clause (i) for an inactive substance on the confidential portion of the list published under paragraph (1) seeks to maintain an existing claim for protection against disclosure of the specific chemical identity of the inactive substance as confidential, the person shall, consistent with the requirements of section 2613 of this title—

(I) in the notice submitted under clause (i), assert the claim; and

(II) by not later than 30 days after providing the notice under clause (i), substantiate the claim.

(iii) ACTIVE STATUS.—On receiving a notification under clause (i), the Administrator shall—

(I) designate the applicable chemical substance as an active substance;

(II) pursuant to section 2613 of this title, promptly review any claim and associated substantiation submitted pursuant to clause (ii) for protection against disclosure of the specific chemical identity of the chemical substance and approve, approve in part and deny in part, or deny the claim;

(III) except as provided in this section and section 2613 of this title, protect from disclosure the specific chemical identity of the chemical substance for which the Administrator approves a claim under subclause (II) for a period of 10 years, unless, prior to the expiration of the period—

(aa) the person notifies the Administrator that the person is withdrawing the claim, in which case the Administrator shall not protect the information from disclosure; or

(bb) the Administrator otherwise becomes aware that the information does not qualify for protection from disclosure, in which case the Administrator shall take the actions described in section 2613(g)(2) of this title; and

(IV) pursuant to section 2605(b) of this title, review the priority of the chemical substance as the Administrator determines to be necessary.

(C) CATEGORY STATUS.—The list of inactive substances shall not be considered to be a category for purposes of section 2625(c) of this title.

(6) INTERIM LIST OF ACTIVE SUBSTANCES.—Prior to the promulgation of the rule required under paragraph (4)(A), the Administrator shall designate the chemical substances reported under part 711 of title 40, Code of Federal Regulations

(as in effect on June 22, 2016), during the reporting period that most closely preceded June 22, 2016, as the interim list of active substances for the purposes of section 2605(b) of this title.

(7) PUBLIC INFORMATION.—Subject to this subsection and section 2613 of this title, the Administrator shall make available to the public—

(A) each specific chemical identity on the nonconfidential portion of the list published under paragraph (1) along with the Administrator's designation of the chemical substance as an active or inactive substance;

(B) the unique identifier assigned under section 2613 of this title, accession number, generic name, and, if applicable, premanufacture notice case number for each chemical substance on the confidential portion of the list published under paragraph (1) for which a claim of confidentiality was received; and

(C) the specific chemical identity of any active substance for which—

(i) a claim for protection against disclosure of the specific chemical identity of the active substance was not asserted, as required under this subsection or section 2613 of this title;

(ii) all claims for protection against disclosure of the specific chemical identity of the active substance have been denied by the Administrator; or

(iii) the time period for protection against disclosure of the specific chemical identity of the active substance has expired.

(8) LIMITATION.—No person may assert a new claim under this subsection or section 2613 of this title for protection from disclosure of a specific chemical identity of any active or inactive substance for which a notice is received under paragraph (4)(A)(i) or (5)(B)(i) that is not on the confidential portion of the list published under paragraph (1).

(9) CERTIFICATION.—Under the rules promulgated under this subsection, manufacturers and processors, as applicable, shall be required—

(A) to certify that each notice or substantiation the manufacturer or processor submits complies with the requirements of the rule, and that any confidentiality claims are true and correct; and

(B) to retain a record documenting compliance with the rule and supporting confidentiality claims for a period of 5 years beginning on the last day of the submission period.

(10) MERCURY.—

(A) DEFINITION OF MERCURY.—In this paragraph, notwithstanding section 2602(2)(B) of this title, the term ''mercury'' means—

(i) elemental mercury; and

(ii) a mercury compound.

(B) PUBLICATION.—Not later than April 1, 2017, and every 3 years thereafter, the Administrator shall carry out and publish in the Federal Register an inventory of mercury supply, use, and trade in the United States.

(C) PROCESS.—In carrying out the inventory under subparagraph (B), the Administrator shall—

(i) identify any manufacturing processes or products that intentionally add mercury; and

(ii) recommend actions, including proposed revisions of Federal law or regulations, to achieve further reductions in mercury use.

(D) REPORTING.—

(i) IN GENERAL.—To assist in the preparation of the inventory under subparagraph (B), any person who manufactures mercury or mercury-added products or otherwise intentionally uses mercury in a manufacturing process shall make periodic reports to the Administrator, at such time and including such information as the Administrator shall determine by rule promulgated not later than 2 years after June 22, 2016.

(ii) COORDINATION.—To avoid duplication, the Administrator shall coordinate the reporting under this subparagraph with the Interstate Mercury Education and Reduction Clearinghouse.

(iii) EXEMPTION.—Clause (i) shall not apply to a person engaged in the generation, handling, or management of mercury-containing waste, unless that person manufactures or recovers mercury in the management of that waste.

(c) Records

Any person who manufactures, processes, or distributes in commerce any chemical substance or mixture shall maintain records of significant adverse reactions to health or the environment, as determined by the Administrator by rule, alleged to have been caused by the substance or mixture. Records of such adverse reactions to the health of employees shall be retained for a period of 30 years from the date such reactions were first reported to or known by the person maintaining such records. Any other record of such adverse reactions shall be retained for a period of five years from the date the information contained in the record was first reported to or known by the person maintaining the record. Records required to be maintained under this subsection shall include records of consumer allegations of personal injury or harm to health, reports of occupational disease or injury, and reports or complaints of injury to the environment submitted to the manufacturer, processor, or distributor in commerce from any source. Upon request of any duly designated representative of the Administrator, each person who is required to maintain records under this subsection shall permit the inspection of such records and shall submit copies of such records.

(d) Health and safety studies

The Administrator shall promulgate rules under which the Administrator shall require any person who manufactures, processes, or distributes in commerce or who proposes to manufacture, process, or distribute in commerce any chemical substance or mixture (or with respect to paragraph (2), any person who has possession of a study) to submit to the Administrator—

(1) lists of health and safety studies (A) conducted or initiated by or for such person with respect to such substance or mixture at any time, (B) known to such person, or (C) reasonably ascertainable by such person, except that the Administrator may exclude certain types or categories of studies from the requirements

of this subsection if the Administrator finds that submission of lists of such studies are unnecessary to carry out the purposes of this chapter; and

(2) copies of any study contained on a list submitted pursuant to paragraph (1) or otherwise known by such person.

(e) Notice to Administrator of substantial risks

Any person who manufactures, processes, or distributes in commerce a chemical substance or mixture and who obtains information which reasonably supports the conclusion that such substance or mixture presents a substantial risk of injury to health or the environment shall immediately inform the Administrator of such information unless such person has actual knowledge that the Administrator has been adequately informed of such information.

(f) "Manufacture" and "process" defined

For purposes of this section, the terms "manufacture" and "process" mean manufacture or process for commercial purposes.

(Pub. L. 94–469, title I, §8, Oct. 11, 1976, 90 Stat. 2027; renumbered title I, Pub. L. 99–519, §3(c)(1), Oct. 22, 1986, 100 Stat. 2989; amended Pub. L. 114–182, title I, §§8, 19(g), June 22, 2016, 130 Stat. 470, 507.)

AMENDMENTS

2016—Subsec. (a)(2). Pub. L. 114–182, §8(a)(1)(A), struck out concluding provisions which read as follows: "To the extent feasible, the Administrator shall not require under paragraph (1), any reporting which is unnecessary or duplicative."

Subsec. (a)(2)(E). Pub. L. 114–182, §19(g)(1), substituted "information" for "data".

Subsec. (a)(3)(A)(ii)(I). Pub. L. 114–182, §19(g)(2), substituted ", an order in effect under section 2603 or 2604(e) of this title, or a consent agreement under section 2603 of this title" for "or an order in effect under section 2604(e) of this title".

Subsec. (a)(3)(C). Pub. L. 114–182, §8(a)(1)(B), added subpar. (C).

Subsec. (a)(4) to (6). Pub. L. 114–182, §8(a)(1)(C), added pars. (4) to (6).

Subsec. (b)(3) to (9). Pub. L. 114–182, §8(a)(2), added pars. (3) to (9).

Subsec. (b)(10). Pub. L. 114–182, §8(b), added par. (10).

EFFECTIVE DATE

Section effective Jan. 1, 1977, see section 31 of Pub. L. 94–469, set out as a note under section 2601 of this title.

ASBESTOS INFORMATION

Pub. L. 100–577, Oct. 31, 1988, 102 Stat. 2901, provided that:

"SECTION 1. SHORT TITLE.

"This Act may be cited as the 'Asbestos Information Act of 1988'.

"SEC. 2. SUBMISSION OF INFORMATION BY MANUFACTURERS.

"Within 90 days after the date of the enactment of this Act [Oct. 31, 1988], any person who manufactured or processed, before the date of the enactment of this Act, asbestos or asbestos-containing material that was prepared for sale for use as surfacing material, thermal system insulation, or miscellaneous material in buildings (or whose corporate predecessor manufactured or processed such asbestos or material) shall submit to the Administrator of the Environmental Protection Agency the years of manufacture, the types or classes of product, and, to the extent available, other identifying characteristics reasonably necessary to identify or distinguish the asbestos or asbestos-containing material. Such person also may submit to the Administrator protocols for samples of asbestos and asbestos-containing material.

"SEC. 3. PUBLICATION OF INFORMATION.

"Within 30 days after the date of the enactment of this Act [Oct. 31, 1988], the Administrator shall publish a notice in the Federal Register that explains how, when, and where the information specified in section 2 is to be submitted. The Administrator shall receive and organize the information submitted under section 2 and, within 180 days after the date of the enactment of this Act, shall publish the information. In carrying out this section, the Administrator may not—

"(1) review the information submitted under section 2 for accuracy, or

"(2) analyze such information to determine whether it is reasonably necessary to identify or distinguish the particular asbestos or asbestos-containing material.

"SEC. 4. DEFINITIONS.

"In this Act:

"(1) The term 'asbestos' means—

"(A) chrysotile, amosite, or crocidolite, or

"(B) in fibrous form, tremolite, anthophyllite, or actinolite.

"(2) The term 'asbestos-containing material' means any material containing more than one percent asbestos by weight.

"(3) The term 'identifying characteristics' means a description of asbestos or asbestos-containing material, including—

"(A) the mineral or chemical constituents (or both) of the asbestos or material by weight or volume (or both),

"(B) the types or classes of the product in which the asbestos or material is contained,

"(C) the designs, patterns, or textures of the product in which the asbestos or material is contained, and

"(D) the means by which the product in which the asbestos or material is contained may be distinguishable from other products containing asbestos or asbestos-containing material.

"(4) The term 'miscellaneous material' means building material on structural components, structural members, or fixtures, such as floor and ceiling tiles. The term does not include surfacing material or thermal system insulation.

"(5) The term 'protocol' means any procedure for taking, handling, and preserving samples of asbestos and asbestos-containing material and for testing and analyzing such samples for the purpose of determining the person who manufactured or processed for sale such samples and the identifying characteristics of such samples.

"(6) The term 'surfacing material' means material in a building that is sprayed on surfaces, troweled on surfaces, or otherwise applied to surfaces for acoustical, fireproofing, or other purposes, such as acoustical plaster on ceilings and fireproofing material on structural members.

"(7) The term 'thermal system insulation' means material in a building applied to pipes, fittings, boilers, breeching, tanks, ducts, or other structural components to prevent heat loss or gain or water condensation, or for other purposes."

§ 2608. Relationship to other Federal laws

(a) Laws not administered by the Administrator

(1) If the Administrator determines that the manufacture, processing, distribution in commerce, use, or disposal of a chemical substance or mixture, or that any combination of such activities, presents an unreasonable risk of injury to health or the environment, without consider-

CAS No.	Substance	Effective date	Reporting date
Voluntary HPV Challenge Program orphan (unsponsored) chemicals			
90640–86–1	Distillates (coal tar), heavy oils	September 29, 2006	November 28, 2006
119345–02–7	Benzene, 1,1'-oxybis-, tetrapropylene derivs.	September 29, 2006	November 28, 2006
125997–20–8	Phosphoric acid, mixed 3-bromo-2,2-dimethylpropyl and 2-bromoethyl and 2-chloroethyl esters.	September 29, 2006	November 28, 2006

(Secs 8(a) and 8(d), 90 Stat. 2027, 2029; 15 U.S.C. 2607 (a) and (d))

[47 FR 26998, June 22, 1982]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §712.30, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.fdsys.gov*.

EFFECTIVE DATE NOTE: At 59 FR 14115, Mar. 25, 1994, in §712.30 paragraph (x), the chemical substances under the category "propylene glycol ethers esters" and all related dates were stayed, effective Mar. 25, 1994. At 60 FR 31921, June 19, 1995, §712.30 was amended in part by redesignating paragraph (x) as paragraph (e).

PART 713—REPORTING REQUIREMENTS FOR THE TSCA INVENTORY OF MERCURY SUPPLY, USE, AND TRADE (Eff. 8-27-18)

Sec.

AUTHORITY: 15 U.S.C. 2607(b)(10)(D).

SOURCE: 83 FR 30073, June 27, 2018, unless otherwise noted.

EFFECTIVE DATE NOTE: At 83 FR 30073, June 27, 2018, part 713 was added, effective Aug. 27, 2018.

§713.1 Purpose, scope, and compliance.

(a) This part specifies reporting and recordkeeping procedures under section 8(b)(10) of the Toxic Substances Control Act (TSCA) (15 U.S.C. 2607(b)(10)) for certain manufacturers (including importers) and processers of mercury as defined in section 8(b)(10)(A) to include elemental mercury and mercury compounds. Hereinafter "mercury" will refer to both elemental mercury and mercury compounds collectively, except where separately identified. Section 8(b)(10)(D) of TSCA authorizes the EPA Administrator to require reporting from any person who manufactures mercury or mercury-added products or otherwise intentionally uses mercury in a manufacturing process to carry out and publish in the FEDERAL REGISTER an inventory of mercury supply, use, and trade in the United States. In administering this mercury inventory, EPA is directed to identify any manufacturing processes or products that intentionally add mercury and to recommend actions, including proposed revisions of Federal law or regulations, to achieve further reductions in mercury use. EPA intends to use the collected information to implement TSCA and shape the Agency's efforts to recommend actions, both voluntary and regulatory, to reduce the use of mercury in commerce. In so doing, the Agency will conduct timely evaluation and refinement of these reporting requirements so that they are efficient and non-duplicative for reporters.

(b) This part applies to the activities associated with the periodic publication of information on mercury supply, use, and trade in the United States. Except as described at §713.7, the reporting requirements for mercury supply,

use, and trade apply to the following activities:

(1) Activities undertaken with the purpose of obtaining an immediate or eventual commercial advantage:

(i) Import of mercury;

(ii) Manufacture (other than import) of mercury;

(iii) Import of a mercury-added product;

(iv) Manufacture (other than import) of a mercury-added product; and

(v) Intentional use of mercury in a manufacturing process.

(2) Activities undertaken in relationship to those activities described in paragraph (b)(1) of this section:

(i) Distribution in commerce, including domestic sale or transfer, of mercury;

(ii) Distribution in commerce, including domestic sale or transfer, of a mercury-added product;

(iii) Storage of mercury (including import);

(iv) Export of a mercury compound (unless specifically prohibited); and

(v) Export of a mercury-added product.

(c) Section 15(3) of TSCA makes it unlawful for any person to fail or refuse to submit information required under this part. In addition, TSCA section 15(3) makes it unlawful for any person to fail to: Establish or maintain records, or permit access to records required by this part. Section 16 of TSCA provides that any person who violates a provision of TSCA section 15 is liable to the United States for a civil penalty and may be criminally prosecuted. Pursuant to TSCA section 17, the Federal Government may seek judicial relief to compel submission of TSCA section 8 information and to otherwise restrain any violation of TSCA section 15.

(d) Each person who reports under this part must certify the accuracy and maintain records of the information reported under this part and, in accordance with TSCA, permit access to, and the copying of, such records by EPA officials.

§713.5 Mercury for which information must be reported.

(a) Elemental mercury (Chemical Abstracts Service Registry Number 7439–97–6); or

(b) A mercury compound, including but not limited to the mercury compounds listed in Table 1 of this part by Chemical Abstracts Service Registry Number:

TABLE 1—MERCURY COMPOUNDS

Chemical Abstracts Service Registry No.	Mercury compound
10045–94–0	Nitric acid, mercury(2+) salt (2:1).
100–57–2	Mercury, hydroxyphenyl-.
10112–91–1	Mercury chloride (Hg2Cl2).
10124–48–8	Mercury amide chloride (Hg(NH2)Cl).
103–27–5	Mercury, phenyl(propanoato-.kappa.O)-.
10415–75–5	Nitric acid, mercury(1+) salt (1:1).
104–60–9	Mercury, (9-octadecenoato-.kappa.O)phenyl-.
1191–80–6	9-Octadecenoic acid (9Z)-, mercury(2+) salt (2:1).
12068–90–5	Mercury telluride (HgTe).
13170–76–8	Hexanoic acid, 2-ethyl-, mercury(2+) salt (2:1).
13302–00–6	Mercury, (2-ethylhexanoato-.kappa.O)phenyl-.
1335–31–5	Mercury cyanide oxide (Hg2(CN)2O).
1344–48–5	Mercury sulfide (HgS).
1345–09–1	Cadmium mercury sulfide.
13876–85–2	Mercurate(2-), tetraiodo-, copper(1+) (1:2), (T-4)-.
138–85–2	Mercurate(1-), (4-carboxylatophenyl)hydroxy-, sodium (1:1).
141–51–5	Mercury, iodo(iodomethyl)-.
14783–59–6	Mercury, bis[(2-phenyldiazenecarbothioic acid-.kappa.S) 2-phenylhydrazidato-.kappa.N2]-, (T-4)-.
15385–58–7	Mercury, dibromodi-, (Hg-Hg).
15785–93–0	Mercury, chloro[4-[(2,4-dinitrophenyl)amino]phenyl]-.
15829–53–5	Mercury oxide (Hg2O).
1600–27–7	Acetic acid, mercury(2+) salt (2:1).
1785–43–9	Mercury, chloro(ethanethiolato)-.
19447–62–2	Mercury, (acetato-.kappa.O)[4-[2-[4-(dimethylamino)phenyl]diazenyl]phenyl]-.
20582–71–2	Mercurate(2-), tetrachloro-, potassium (1:2), (T-4)-.
20601–83–6	Mercury selenide (HgSe).
21908–53–2	Mercury oxide (HgO).
22450–90–4	Mercury(1+), amminephenyl-, acetate (1:1).

TABLE 1—MERCURY COMPOUNDS—Continued

Chemical Abstracts Service Registry No.	Mercury compound
24579–90–6	Mercury, chloro(2-hydroxy-5-nitrophenyl)-.
24806–32–4	Mercury, [.mu.-[2-dodecylbutanedioato(2-).kappa.O1:.kappa.O4]]diphenyldi-.
26545–49–3	Mercury, (neodecanoato-.kappa.O)phenyl-.
27685–51–4	Cobaltate(2-), tetrakis(thiocyanato-.kappa.N)-, mercury(2+) (1:1), (T-4)-.
29870–72–2	Cadmium mercury telluride ((Cd,Hg)Te).
3294–57–3	Mercury, phenyl(trichloromethyl)-.
33770–60–4	Mercury, [3,6-dichloro-4,5-di(hydroxy-.kappa.O)-3,5cyclohexadiene-1,2-dionato(2-)]-.
3570–80–7	Mercury, bis(acetato-.kappa.O)[.mu.-(3',6'-dihydroxy-3oxospiro[isobenzofuran-1(3H),9'-[9H]xanthene]-2',7'diyl)]di-.
537–64–4	Mercury, bis(4-methylphenyl)-.
539–43–5	Mercury, chloro(4-methylphenyl)-.
54–64–8	Mercurate(1-), ethyl[2-(mercapto-.kappa.S)benzoato(2-).kappa.O]-, sodium (1:1).
55–68–5	Mercury, (nitrato-.kappa.O)phenyl-.
56724–82–4	Mercury, phenyl[(2-phenyldiazenecarbothioic acid.kappa.S) 2-phenylhydrazidato-.kappa.N2]-.
587–85–9	Mercury, diphenyl-.
592–04–1	Mercury cyanide (Hg(CN)2).
592–85–8	Thiocyanic acid, mercury(2+) salt (2:1).
593–74–8	Mercury, dimethyl-.
59–85–8	Mercurate(1-), (4-carboxylatophenyl)chloro-, hydrogen.
623–07–4	Mercury, chloro(4-hydroxyphenyl)-.
62–38–4	Mercury, (acetato-.kappa.O)phenyl-.
62638–02–2	Cyclohexanebutanoic acid, mercury(2+) salt (2:1).
627–44–1	Mercury, diethyl-.
6283–24–5	Mercury, (acetato-.kappa.O)(4-aminophenyl)-.
628–86–4	Mercury, bis(fulminato-.kappa.C)-.
629–35–6	Mercury, dibutyl-.
63325–16–6	Mercurate(2-), tetraiodo-, (T-4)-, hydrogen, compd. with 5-iodo-2-pyridinamine (1:2:2).
63468–53–1	Mercury, (acetato-.kappa.O)(2-hydroxy-5-nitrophenyl)-.
63549–47–3	Mercury, bis(acetato-.kappa.O)(benzenamine)-.
68201–97–8	Mercury, (acetato-.kappa.O)diamminephenyl-, (T-4)-.
72379–35–2	Mercurate(1-), triiodo-, hydrogen, compd. with 3-methyl2(3H)-benzothiazolimine (1:1:1).
7439–97–6	Mercury.
7487–94–7	Mercury chloride (HgCl2).
7546–30–7	Mercury chloride (HgCl).
7616–83–3	Perchloric acid, mercury(2+) salt (2:1).
7774–29–0	Mercury iodide (HgI2).
7783–33–7	Mercurate(2-), tetraiodo-, potassium (1:2), (T-4)-.
7783–35–9	Sulfuric acid, mercury(2+) salt (1:1).
7783–39–3	Mercury fluoride (HgF2).
7789–47–1	Mercury bromide (HgBr2).
90–03–9	Mercury, chloro(2-hydroxyphenyl)-.
94070–93–6	Mercury, [.mu.-[(oxydi-2,1-ethanediyl 1,2benzenedicarboxylato-.kappa.O2)(2-)]]diphenyldi-.

§ 713.7 Persons who must report.

(a) Any person who manufactures (including imports) mercury, except:

(1) A person who does not manufacture (including import) mercury with the purpose of obtaining an immediate or eventual commercial advantage;

(2) A person who manufactures (including imports) mercury only as an impurity; or

(3) A person engaged only in the generation, handling, or management of mercury-containing waste, including recovered mercury that is discarded or elemental mercury that is managed for long-term storage and management under section 6939f(g)(2) of the Resource Conservation and Recovery Act;

(b) Any person who manufactures (including imports) a mercury-added product, except:

(1) A person who does not manufacture (including import) a mercury-added product with the purpose of obtaining an immediate or eventual commercial advantage;

(2) A person engaged only in the import of a product that contains a component that is a mercury-added product; or

(3) A person engaged only in the manufacture (other than import) of a product that contains a component that is a mercury-added product who did not first manufacture (including import) the component that is a mercury-added product; and

(c) Any person who otherwise intentionally uses mercury in a manufacturing process, except a person who does not intentionally use mercury in a manufacturing process with the purpose of obtaining an immediate or eventual commercial advantage.

§713.9 General requirements for which information must be reported.

Except as described at §713.7:

(a) Persons who manufacture (including import) mercury in amounts greater than or equal to 2,500 pounds (lbs.) for elemental mercury or greater than or equal to 25,000 lbs. for mercury compounds for a specific reporting year must report, as applicable:

(1) Amount of mercury stored (lbs.); and

(2) Amount of mercury distributed in commerce (lbs.).

(b) All other persons who manufacture (including import) mercury must report, as applicable:

(1) Amount of mercury manufactured (other than imported) (lbs.);

(2) Amount of mercury imported (lbs.);

(3) Amount of mercury exported (lbs.), except mercury prohibited from export at 15 U.S.C. 2611(c)(1) and (7);

(4) Amount of mercury stored (lbs.); and

(5) Amount of mercury distributed in commerce (lbs.).

(c) Persons who report sales of mercury-added products to the Interstate Mercury Education and Reduction Clearinghouse (IMERC) must report, as applicable:

(1) Amount of mercury in manufactured (other than imported) products (lbs.);

(2) Amount of mercury in imported products (lbs.); and

(3) Amount of mercury in exported products (lbs.).

(d) All other persons who manufacture (including import) mercury-added products must report, as applicable:

(1) Amount of mercury in manufactured (other than imported) products (lbs.);

(2) Amount of mercury in imported products (lbs.);

(3) Amount of mercury in exported products (lbs.); and

(4) Amount of mercury in products distributed in commerce (lbs.).

(e) Persons who otherwise intentionally use mercury in a manufacturing process must report, as applicable:

(1) Amount of mercury otherwise intentionally used (lbs.) in a manufacturing process; and

(2) Amount of mercury stored (lbs.).

§713.11 Specific requirements for which information must be reported.

Except as described at §713.7:

(a) Any person who manufactures (including imports) mercury must specify, as applicable, the specific mercury compound(s) from a pre-selected list (as listed in Table 1 of this part).

(b) Any person who manufactures (including imports) a mercury-added product must specify as applicable, the specific category(ies) and subcategory(ies) from a pre-selected list, as listed in Table 2 of this part:

TABLE 2—CATEGORIES AND SUBCATEGORIES OF MERCURY-ADDED PRODUCTS

Category	Subcategory
Batteries	—Button cell, silver. —Button cell, zinc-air. —Button cell, alkaline. —Stacked button cell batteries. —Manganese oxide. —Silver oxide. —Mercuric oxide, non-button cell. —Button cell, mercuric oxide. —Button cell, zinc carbon. —Other (specify).
Dental amalgam	[No subcategories].

TABLE 2—CATEGORIES AND SUBCATEGORIES OF MERCURY-ADDED PRODUCTS—Continued

Category	Subcategory
Formulated products (includes uses in cosmetics, pesticides, and laboratory chemicals).	—Skin-lightening creams. —Lotions. —Soaps and sanitizers. —Bath oils and salts. —Topical antiseptics. —Preservatives (*e.g.*, for use in vaccines and eye-area cosmetics when no preservative alternatives are available). —Pharmaceuticals (including prescription and over-the-counter drug products). —Cleaning products (not registered as pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act). —Pesticides. —Paints. —Dyes. —Reagents (*e.g.*, catalysts, buffers, fixatives). —Other (specify).
Lighting, lamps, bulbs	—Linear fluorescent. —Compact fluorescent. —U-tube and circular fluorescent. —Cold cathode fluorescent. —External electrode fluorescent. —Mercury vapor. —Metal halide. —High pressure sodium. —Mercury short arc. —Neon. —Other (specify).
Measuring instruments	—Barometer. —Fever thermometer. —Flow meter. —Hydrometer. —Hygrometer/psychrometer. —Manometer. —Non-fever thermometer. —Pyrometer. —Sphygmomanometer. —Other (specify).
Pump seals	[No subcategories].
Switches, relays, sensors, valves	—Tilt switch. —Vibration switch. —Float switch. —Pressure switch. —Temperature switch. —Displacement relay. —Wetted reed relay. —Contact relay. —Flame sensor. —Thermostat. —Other (specify).
Miscellaneous/novelty mercury-added products	—Wheel weights. —Wheel rotation balancers/stabilizers. —Firearm recoil suppressors. —Carburetor synchronizers. —Joint support/shock absorption bands. —Other (specify).

(c) Any person who otherwise intentionally uses mercury in a manufacturing process, other than the manufacture of a mercury compound or a mercury-added product, must identify, as applicable:

(1) The specific manufacturing process for which mercury is otherwise intentionally used from a pre-selected list, as listed in Table 3 of this part:

TABLE 3—MANUFACTURING PROCESS FOR WHICH MERCURY IS OTHERWISE INTENTIONALLY USED

Chlorine production (*e.g.*, mercury-cell chlor-alkali process).
Acetaldehyde production.
Sodium/potassium methylate/ethylate production.

TABLE 3—MANUFACTURING PROCESS FOR WHICH MERCURY IS OTHERWISE INTENTIONALLY USED—Continued

Polyurethane/plastic production.
Other (specify).

(2) The specific use of mercury in a manufacturing process from a pre-selected list, as listed in Table 4 of this part:

TABLE 4—SPECIFIC USE OF MERCURY IN A MANUFACTURING PROCESS

Catalyst.
Cathode.
Reactant.
Reagent.
Other (specify).

§713.13 Contextual requirements for which information must be reported.

Except as described at §713.7:

(a) Persons who manufacture (including import) mercury in amounts greater than or equal to 2,500 lbs. for elemental mercury or greater than or equal to 25,000 lbs. for mercury compounds for a specific reporting year must report, as applicable:

(1) Country(ies) of origin for imported mercury;

(2) Country(ies) of destination for exported mercury; and

(3) NAICS code(s) for mercury distributed in commerce.

(b) All other persons who manufacture (including import) mercury must report, as applicable:

(1) Country(ies) of origin for imported mercury;

(2) Country(ies) of destination for exported mercury; and

(3) NAICS code(s) for mercury distributed in commerce.

(c) Persons who report sales of mercury-added products to IMERC must report, as applicable:

(1) Country(ies) of origin for imported products;

(2) Country(ies) of destination for exported products; and

(3) NAICS code(s) for products distributed in commerce.

(d) All other persons who manufacture (including import) mercury-added products must report, as applicable:

(1) Country(ies) of origin for imported products;

(2) Country(ies) of destination for exported products; and

(3) NAICS code(s) for products distributed in commerce.

(e) Persons who otherwise intentionally use mercury in a manufacturing process, other than the manufacture of a mercury compound or a mercury-added product, must report, as applicable:

(1) Country(ies) of destination for exported final product(s); and

(2) NAICS code(s) for mercury in final product(s) distributed in commerce.

§713.15 Reporting information to EPA.

Any person who must report under this part must report for the submission period described at §713.17:

(a) Quantities of mercury in pounds per applicable activity listed under the general requirements for which information must be reported described at §713.9;

(b) Specific requirements for which information must be reported described at §713.11;

(c) Contextual requirements for which information must be reported described at §713.13; and

(d) According to the procedures described at §713.21.

§713.17 When to report.

(a) Any person who must report under this part must report for the reporting year described as follows. A reporting year is the year during which mercury activity, required to be reported by this rule, has occurred. The 2018 reporting year is from January 1, 2018 to December 31, 2018. Subsequent reporting years are from January 1 to December 31 at 3-year intervals, beginning in 2021.

(b) All information reported for an applicable reporting year must be submitted on or before the first day of July following the reporting year. The submission deadline for the 2018 reporting year is July 1, 2019. Subsequent submission deadlines are on or before the first day of July following the reporting year, in 3-year intervals, beginning in 2022.

(c) The data from the 2018 reporting year will be used for the 2020 mercury

inventory, the data from the 2021 reporting year will be used for the 2023 mercury inventory, and so forth at three-year intervals.

§ 713.19 Recordkeeping requirements.

Each person who is subject to the reporting requirements of this part must retain records that document any information reported to EPA. Records relevant to a reporting year must be retained for a period of 3 years beginning on the last day of the reporting year. Submitters are encouraged to retain their records longer than 3 years to ensure that past records are available as a reference when new submissions are being generated.

§ 713.21 Electronic filing.

(a) You must use the Mercury Electronic Reporting (MER) application to complete and submit required information as set forth in § 713.17. Submissions may only be made as set forth in this section.

(b) Submissions must be sent electronically to EPA via CDX.

(c) Access MER and instructions, as follows:

(1) By website. Access MER via the CDX homepage at *https://cdx.epa.gov/* and follow the appropriate links.

(2) By phone or email. Contact the EPA TSCA Hotline at (202) 554–1404 or *TSCA-Hotline@epa.gov*.

PART 716—HEALTH AND SAFETY DATA REPORTING

Subpart A—General Provisions

Sec.

Subpart B—Specific Chemical Listings

AUTHORITY: 15 U.S.C. 2607(d).

SOURCE: 51 FR 32726, Sept. 15, 1986, unless otherwise noted.

Subpart A—General Provisions

§ 716.1 Scope and compliance.

(a) This subpart sets forth requirements for the submission of lists and copies of health and safety studies on chemical substances and mixtures selected for priority consideration for testing rules under section 4(a) of the Toxic Substances Control Act (TSCA) and on other chemical substances and mixtures for which EPA requires health and safety information in fulfilling the purposes of TSCA.

(b) Section 15(3) of TSCA makes it unlawful for any person to fail or refuse to submit information required under this subpart. Section 16 provides that a violation of section 15 renders a person liable to the United States for a civil penalty and possible criminal prosecution. Under section 17, the district courts of the United States have jurisdiction to restrain any violation of section 15.

§ 716.3 Definitions.

The definitions in section 3 of TSCA apply to this subpart. In addition, the following definitions are provided for the purposes of this subpart:

Byproduct means a chemical substance produced without a separate commercial intent during the manufacture, processing, use, or disposal of another chemical substance(s) or mixture(s).

Central Data Exchange or *CDX* means EPA's centralized electronic submission receiving system.

Chemical Information Submission System or *CISS* means EPA's electronic, web-based tool for the completion and submission of data, reports, and other information, or its successors.

N.J.A.C. 7:27B–3.10. Procedures for the determination of volatile organic compounds in surface coating formulations
N.J.A.C. 7:27B–3.11. Procedures for the determination of volatile organic compounds emitted from transfer operations using a flame ionization detector (FID) or non-dispersive infrared analyzer (NDIR)
N.J.A.C. 7:27B–3.12. Procedures for the determination of volatile organic compounds in cutback and emulsified asphalts
N.J.A.C. 7:27B–3.13. Procedures for the determination of leak tightness of gasoline delivery vessels
N.J.A.C. 7:27B–3.14. Procedures for the direct detection of fugitive volatile organic compound leaks
N.J.A.C. 7:27B–3.15. Procedures for the direct detection of fugitive volatile organic compound leaks from gasoline tank trucks and vapor collection systems using a combustible gas detector
N.J.A.C. 7:27B–3.18. Test methods and sources incorporated by reference

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 713

[EPA–HQ–OPPT–2017–0421; FRL–9979–74]
RIN 2070–AK22

Mercury; Reporting Requirements for the TSCA Mercury Inventory

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: As required under section 8(b)(10)(D) of the Toxic Substances Control Act (TSCA), EPA is finalizing reporting requirements for applicable persons to provide information to assist in the preparation of an "inventory of mercury supply, use, and trade in the United States," where "mercury" is defined as "elemental mercury" and "a mercury compound." The requirements apply to any person who manufactures (including imports) mercury or mercury-added products, or otherwise intentionally uses mercury in a manufacturing process. Based on the inventory of information collected, the Agency is directed to "identify any manufacturing processes or products that intentionally add mercury; and . . . recommend actions, including proposed revisions of Federal law or regulations, to achieve further reductions in mercury use." At this time, EPA is not making such identifications or recommendations.

DATES: This final rule is effective August 27, 2018.

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPPT–2017–0421, is available at *http://www.regulations.gov* or at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT:

For technical information contact: Thomas Groeneveld, National Program Chemicals Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 566–1188; email address: *groeneveld.thomas@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Does this action apply to me?

You may be potentially affected by this action if you manufacture (including import) mercury or mercury-added products, or if you otherwise intentionally use mercury in a manufacturing process. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include the following:

- Gold ore mining (NAICS code 212221).
- Lead ore and zinc ore mining (NAICS code 212231).
- All other metal ore mining (NAICS code 212299).
- Asphalt shingle and coating materials manufacturing (NAICS code 324122).
- Synthetic dye and pigment manufacturing (NAICS code 325130).
- Other basic inorganic chemical manufacturing (NAICS code 325180).
- All other basic organic chemical manufacturing (NAICS code 325199).
- Plastics material and resin manufacturing (NAICS code 325211).
- Pesticide and other agricultural chemical manufacturing (NAICS code 325320).
- Medicinal and botanical manufacturing (NAICS code 325411).
- Pharmaceutical preparation manufacturing (NAICS code 325412).
- Biological product (except diagnostic) manufacturing (NAICS code 325414).
- Paint and coating manufacturing (NAICS code 325510).
- Adhesive manufacturing (NAICS code 325520).
- Custom compounding of purchased resins (NAICS code 325991).
- Photographic film, paper, plate, and chemical manufacturing (NAICS code 325992).
- All other miscellaneous chemical product and preparation manufacturing (NAICS code 325998).
- Unlaminated plastics film and sheet (except packaging) manufacturing (NAICS code 326113).
- Unlaminated plastics profile shape manufacturing (NAICS code 326121).
- Urethane and other foam product (except polystyrene) manufacturing (NAICS code 326150).
- All other plastics product manufacturing (NAICS code 326199).
- Tire manufacturing (NAICS code 326211).
- All other rubber product manufacturing (NAICS code 326299).
- Iron and steel mills and ferroalloy manufacturing (NAICS code 331110).
- Rolled steel shape manufacturing (NAICS code 331221).
- Alumina refining and primary aluminum production (NAICS code 331313).
- Secondary smelting and alloying of aluminum (NAICS code 331314).
- Nonferrous metal (except aluminum) smelting and refining (NAICS code 331410).
- Secondary smelting, refining, and alloying of nonferrous metal (except copper and aluminum) (NAICS code 331492).
- Iron foundries (NAICS code 331511).
- Steel foundries (except investment) (NAICS code 331513).
- Fabricated structural metal manufacturing (NAICS code 332312).
- Industrial valve manufacturing (NAICS code 332911).
- Ammunition except small arms manufacturing (NAICS code 332993).
- Small arms, ordnance, and ordnance accessories manufacturing (NAICS code 332994).

- All other miscellaneous fabricated metal product manufacturing (NAICS code 332999).
- Food product machinery manufacturing (NAICS code 333294).
- Office machinery manufacturing (NAICS code 333313).
- Other commercial and service industry machinery manufacturing (NAICS code 333319).
- Heating equipment (except warm air furnaces) manufacturing (NAICS code 333414).
- Air-conditioning and warm air heating equipment and commercial and industrial refrigeration equipment manufacturing (NAICS code 333415).
- Pump and pumping equipment manufacturing (NAICS code 333911).
- Bare printed circuit board manufacturing (NAICS code 334412).
- Semiconductor and related device manufacturing (NAICS code 334413).
- Other electronic component manufacturing (NAICS code 334419).
- Electromedical and electrotherapeutic apparatus manufacturing (NAICS code 334510).
- Search, detection, navigation, guidance, aeronautical, and nautical system and instrument manufacturing (NAICS code 334511).
- Automatic environmental control manufacturing for residential, commercial, and appliance use (NAICS code 334512).
- Instruments and related products manufacturing for measuring, displaying, and controlling industrial process variables (NAICS code 334513).
- Totalizing fluid meter and counting device manufacturing (NAICS code 334514).
- Instrument manufacturing for measuring and testing electricity and electrical signals (NAICS code 334515).
- Analytical laboratory instrument manufacturing (NAICS code 334516).
- Watch, clock, and part manufacturing (NAICS code 334518).
- Other measuring and controlling device manufacturing (NAICS code 334519).
- Electric lamp bulb and part manufacturing (NAICS code 335110).
- Commercial, industrial, and institutional electric lighting fixture manufacturing (NAICS code 335122).
- Other lighting equipment manufacturing (NAICS code 335129).
- Electric house wares and household fan manufacturing (NAICS code 335211).
- Household vacuum cleaner manufacturing (NAICS code 335212).
- Household cooking appliance manufacturing (NAICS code 335221).
- Household refrigerator and home freezer manufacturing (NAICS code 335222).
- Household laundry equipment manufacturing (NAICS code 335224).
- Other major household appliance manufacturing (NAICS code 335228).
- Switchgear and switchboard apparatus manufacturing (NAICS code 335313).
- Relay and industrial control manufacturing (NAICS code 335314).
- Primary battery manufacturing (NAICS code 335912).
- Current-carrying wiring device manufacturing (NAICS code 335931).
- All other miscellaneous electrical equipment and component manufacturing (NAICS code 335999).
- Automobile manufacturing (NAICS code 336111).
- Light truck and utility vehicle manufacturing (NAICS code 336112).
- Heavy duty truck manufacturing (NAICS code 336120).
- Motor home manufacturing (NAICS code 336213).
- Travel trailer and camper manufacturing (NAICS code 336214).
- Other aircraft parts and auxiliary equipment manufacturing (NAICS code 336413).
- Boat building (NAICS code 336612).
- Motorcycles and parts manufacturing (NAICS code 336991).
- Surgical and medical instrument manufacturing (NAICS code 339112).
- Costume jewelry and novelty manufacturing (NAICS code 339914).
- Game, toy, and children's vehicle manufacturing (NAICS code 339932).
- Sign manufacturing (NAICS code 339950).
- Other chemical and allied products merchant wholesalers (NAICS code 424690).
- Research and development in the physical, engineering, and life sciences (except biotechnology) (NAICS code 541712).
- Hazardous waste treatment and disposal (NAICS code 562211).
- Other nonhazardous waste treatment and disposal (NAICS code 562219).
- Materials recovery facilities (NAICS code 562920).
- National security (NAICS code 928110).

B. What action is the Agency taking?

EPA is issuing a final rule under TSCA section 8(b)(10) to require reporting to assist in the preparation of "an inventory of mercury supply, use, and trade in the United States," where "mercury" is defined as "elemental mercury" and "a mercury compound." Hereinafter "mercury" will refer to both elemental mercury and mercury compounds collectively, except where separately identified. This final rule requires reporting from any person who manufactures (including imports) mercury or mercury-added products, or otherwise intentionally uses mercury in a manufacturing process. EPA published its initial inventory report in the **Federal Register** on March 29, 2017 (Ref. 1), which noted data gaps and limitations encountered by the Agency in its historic reliance on publicly available data on the mercury market in the United States. As stated in the initial inventory report, "[f]uture triennial inventories of mercury supply, use, and trade are expected to include data collected directly from persons who manufacture or import mercury or mercury-added products, or otherwise intentionally use mercury in a manufacturing process" (Ref. 1). These reporting requirements will help the Agency narrow such data gaps, prepare subsequent, triennial publications of the inventory, and execute the mandate to "identify any manufacturing processes or products that intentionally add mercury; and . . . recommend actions, including proposed revisions of Federal law or regulations, to achieve further reductions in mercury use" (15 U.S.C. 2607(b)(10)(C)).

In addition, this information could be used by the U.S. Government to assist in its national reporting regarding its implementation of the Minamata Convention on Mercury (Minamata Convention), to which the United States is a Party (Ref. 2). The Minamata Convention is an international environmental agreement that has as its objective the protection of human health and the environment from anthropogenic emissions and releases of elemental mercury and mercury compounds. Article 21 of the Convention requires Parties to include in their national reports, among other information, information demonstrating that the Party has met the requirements of Article 3 on Mercury Supply Sources and Trade and of Article 5 on Manufacturing Processes in Which Mercury or Mercury Compounds Are Used. EPA intends to use the collected information from the mercury inventory to implement TSCA and assist in its national reporting for the Minamata Convention as well as to shape the Agency's efforts to reduce the use of mercury in commerce. In so doing, the Agency will conduct a timely evaluation and refinement of these reporting requirements so that they are efficient and non-duplicative for reporters.

EPA issued the proposed rule for this action in the **Federal Register** on October 26, 2017 with a December 26, 2017 deadline for comments (Ref. 3); in response to two requests, the deadline

was extended to January 11, 2018 (Ref. 4). Based on comments received, the Agency modified the regulatory text to improve the logic and flow of sections, to clarify various terms and reporting requirements, and to eliminate several quantitative reporting requirements. Such issues are discussed in greater detail in Unit III. and the *Response to Comments* document for this rule (Ref. 5).

The reporting requirements for supply, use, and trade of mercury include activities that are established TSCA terms: Manufacture, import, distribution in commerce, storage, and export. The reporting requirements also apply to otherwise intentional use of mercury in a manufacturing process. Persons who manufacture (including import) mercury or mercury-added products, or otherwise intentionally use mercury in a manufacturing process, are required to report amounts of mercury in pounds (lbs.) used in such activities during a designated reporting year. Reporters also are required to identify specific mercury compounds, mercury-added products, manufacturing processes, and how mercury is used in manufacturing processes, as applicable, from preselected lists. For certain activities, reporters are required to provide additional, contextual data (*e.g.*, NAICS codes for mercury or mercury-added products distributed in commerce).

The finalized reporting requirements do not apply to: (1) Persons who do not first manufacture, import, or otherwise intentionally use mercury; (2) persons who only generate, handle, or manage mercury-containing waste; (3) persons who only manufacture mercury as an impurity; and (4) persons engaged in activities involving mercury not with the purpose of obtaining an immediate or eventual commercial advantage (see Unit III.D.2.). Within the category of persons who must report, there are certain persons who are not required to provide specific data elements. To avoid reporting that is unnecessary or duplicative, the Agency is finalizing certain exemptions for persons who already report for mercury and mercury-added products to the TSCA section 8(a) Chemical Data Reporting (CDR) rule and the Interstate Mercury Education and Reduction Clearinghouse (IMERC) Mercury-added Products Database, respectively. Such reporters are not required to respond to certain data elements of the mercury reporting application that are comparable to data they also report in response to CDR and IMERC reporting requirements.

C. Why is the Agency taking this action?

EPA is issuing this final rule under TSCA section 8(b)(10) to require reporting to assist in the preparation of the statutorily-required inventory of mercury supply, use, and trade in the United States. As indicated in the initial inventory report (Ref. 1), this final rule will support future triennial publications of the mercury inventory by establishing reporting requirements and an electronic application and database to collect, store, and analyze information provided by applicable respondents. In administering this mercury inventory, the Agency will "identify any manufacturing processes or products that intentionally add mercury; and . . . recommend actions, including proposed revisions of Federal law or regulations, to achieve further reductions in mercury use" (15 U.S.C. 2607(b)(10)(C)).

D. What is the Agency's authority for taking this action?

EPA is issuing this rule pursuant to TSCA section 8(b)(10)(D) to implement the direction at TSCA section 8(b)(10)(B) that "[n]ot later than April 1, 2017, and every 3 years thereafter, the Administrator shall carry out and publish in the **Federal Register** an inventory of mercury supply, use, and trade in the United States." TSCA section 8(b)(10)(D) requires EPA to promulgate a final rule by June 22, 2018 that establishes reporting requirements applicable to any person who manufactures mercury or mercury-added products or otherwise intentionally uses mercury in a manufacturing process to assist in the preparation of the inventory.

In addition, the Paperwork Reduction Act (PRA) requires Federal agencies to manage information resources to reduce information collection burdens on the public; increase program efficiency and effectiveness; and improve the integrity, quality, and utility of information to all users within and outside an agency, including capabilities for ensuring dissemination of public information, public access to Federal Government information, and protections for privacy and security (44 U.S.C. 3506).

TSCA section 2 expresses the intent of Congress that EPA carry out TSCA in a reasonable and prudent manner and in consideration of the impacts that any action taken under TSCA may have on the environment, the economy, and society. EPA will manage and leverage its information resources, including information technology, and the Agency is requiring the use of electronic reporting to implement the mercury inventory reporting requirements of TSCA section 8(b)(10)(D) in a reasonable and prudent manner.

E. What are the estimated incremental impacts of the final rule?

EPA prepared an economic analysis of the potential impacts associated with this rulemaking (Ref. 6). The chief benefit of the final rule is the collection of detailed data on mercury, which will serve as a basis to recommend actions to further reduce mercury use in the United States, as required at TSCA section 8(b)(10)(C). Another benefit is the use of information collected under the final rule to help the United States implement its obligations under the Minamata Convention. While there are no quantified benefits for the final rule, the statutory mandate specifically calls for and authorizes a rule to support an inventory of mercury supply, use, and trade in the United States, to identify any manufacturing processes or products that intentionally add mercury, and to recommend actions to achieve further reductions in mercury use. As described in the Agency's economic analysis, unquantified benefits include providing increased information on mercury and assisting in the reduction of mercury use (Ref. 6). To the extent that the information gathered through this rule is used to reduce mercury use, benefits to society may result from a reduction in exposure.

TABLE 1—SUMMARY OF COSTS AND BENEFITS

Category	Description
Benefits	The final rule will provide information on mercury and mercury-added products to which the Agency (and the public) does not currently have access. To the extent that the information gathered through this final rule is used to reduce mercury use, benefits to society may result from a reduction in risk.

TABLE 1—SUMMARY OF COSTS AND BENEFITS—Continued

Category	Description
Costs	Estimated industry costs and burden total $5.83 million and 72,600 hours (for 750 respondents) for the first year of reporting, with an individual estimate of $7,800 and 97 hours. For future triennial reporting cycles, industry costs and burden will be $4.04 million and 50,200 hours, with an individual estimate of $5,400 and 67 hours. These estimates include compliance determination, rule familiarization, CBI substantiation, electronic reporting, and recordkeeping, in addition to completing reporting requirements.
Effects on State, Local, and Tribal Governments.	Government entities are not expected to be subject to the rule's requirements, which apply to entities that manufacture (including import) mercury or mercury-added products, or otherwise intentionally use mercury in a manufacturing process. The final rule does not have a significant intergovernmental mandate, significant or unique effect on small governments, or have Federalism implications.
Small Entity Impacts	The final rule will impact 211 companies that meet the U.S. Small Business Administration (SBA) definitions for their respective NAICS classifications: Four small entities (1.85%) are expected to incur impacts of 1% percent or greater. No small entity assessed is expected to incur an impact of greater than 3%. Five companies could not be verified as small entities. Even if the entities whose status is "undetermined" were assumed to be impacted small entities, this would result in only nine entities (4.17%). Therefore, EPA certifies that this action will not have a significant economic impact on a substantial number of small entities.
Environmental Justice and Protection of Children.	The information obtained from the reporting required by this final rule will be used to inform the Agency's decision-making process regarding chemicals to which minority or low-income populations or children may be disproportionately exposed. This information will also assist the Agency and others in determining whether elemental mercury and mercury compounds addressed in this final rule present potential risks, allowing the Agency and others to take appropriate action to investigate and mitigate those risks.

II. Background

A. Recent Amendments to TSCA and the Initial Inventory

The Frank R. Lautenberg Chemical Safety for the 21st Century Act (Lautenberg Act) (Pub. L. 114–182, 130 Stat. 448), enacted on June 22, 2016, implemented reforms to TSCA (15 U.S.C. 2601 *et seq.*). Among other changes to TSCA, the Lautenberg Act amended TSCA section 8(b) to require EPA to establish: (1) An inventory of mercury supply, use, and trade in the United States; and (2) reporting requirements by rule applicable to any person who manufactures mercury or mercury-added products or otherwise intentionally uses mercury in a manufacturing process not later than June 22, 2018 (15 U.S.C. 2607(b)(10)). Information collected per the reporting requirements will be used to periodically update the mercury inventory; identify any manufacturing processes or products that intentionally add mercury; and recommend actions, including proposed revisions of federal law or regulations, to achieve further reductions in mercury use (15 U.S.C. 2607(b)(10)(B) and (C)). The Lautenberg Act also added certain mercury compounds to the TSCA section 12(c) ban on export of elemental mercury and authorized EPA to ban the export of additional mercury compounds by rule. Additional information on the Lautenberg Act is available on EPA's website at *https://www.epa.gov/assessing-and-managing-chemicalsunder-tsca/frank-r-lautenberg-chemical-safety-21st-century-act.*

Prior to developing its initial inventory, EPA reviewed federal and state reports and databases, among other sources, to assemble a collection of available information on mercury, mercury-added products, and manufacturing processes involving mercury (Ref. 1). In reviewing data obtained, the Agency found that its baseline of data lacked the specificity and level of detail required to develop a mercury inventory responsive to TSCA section 8(b)(10)(D) or to be useful to inform mercury use reduction efforts for both the public and private sectors (Ref. 1). In 2015, to develop its understanding of domestic mercury supply and trade, the Agency collected information on the quantity of mercury sold in the United States for the years 2010 and 2013 from five companies identified as the primary recyclers and distributors of mercury in the United States (Ref. 7), which revealed a gap between available data on the amount of mercury within sold mercury-added products and the amount of bulk elemental mercury sold in the United States. Additional Agency research identified a data gap for the amount of mercury in exported mercury-added products. The Agency also is seeking to identify and differentiate between the amount of mercury in imported versus domestically manufactured mercury-added products. EPA is committed to further addressing such data gaps and considers the national mercury inventory mandated by Congress to be an instrumental means to establish the requisite body of information to support achievement of that goal.

B. Stakeholder Involvement

In developing the proposed rule, the Agency coordinated with the Northeast Waste Management Officials' Association, which administers the IMERC database, as directed by TSCA section 8(b)(10)(D)(ii).

C. Public Comments

During the public comment period (October 26, 2017 to January 11, 2018) for the proposed rule, EPA received 89 comments. After careful review, the Agency determined that 27 of those comments were substantively or procedurally relevant to the proposed rule, while 55 comments were not applicable, germane, or responsive. EPA received six comments generally supportive of the proposed rule and one comment related to mercury use, but exceeded the Agency's understanding of the statutory scope of "mercury supply, use, and trade in the United States." All comments received are identified by docket identification (ID) number EPA–HQ–OPPT–2017–0421 and available at *https://www.regulations.gov.* Included in this docket is the *Response to Comments* document for this rule (Ref. 5).

III. Provisions of This Final Rule

This final rule provides for the collection of information that allows EPA to implement statutory requirements at TSCA section 8(b)(10)(B), which directs that "[n]ot later than April 1, 2017, and every 3 years thereafter, the Administrator shall carry out and publish in the **Federal Register** an inventory of mercury supply, use, and trade in the United States". Based on the inventory, the Agency is directed to "identify any manufacturing processes or products that intentionally add mercury; and . . .

recommend actions, including proposed revisions of Federal law or regulations, to achieve further reductions in mercury use." EPA's rationale for fulfilling specific statutory provisions and terms, including summaries of public comments received and Agency responses and determinations for the final rule, are set forth by topic as follows. Some of these issues are discussed in greater detail in the *Response to Comments* document for this rule (Ref. 5), which is available at docket ID number EPA–HQ–OPPT–2017–0421 at *https://www.regulations.gov*.

A. Definition of Mercury

TSCA section 8(b)(10)(A) states "notwithstanding [TSCA] section 3(2)(B), the term 'mercury' means . . . elemental mercury; and . . . a mercury compound." As such, the definition for mercury at TSCA section 8(b)(10)(A) supersedes the exclusions for "chemical substances" described in TSCA section 3(2)(B) that would otherwise apply to mercury, mercury-added products, or otherwise intentional uses of mercury in manufacturing processes. For example, any "drug, cosmetic, or device" as described in TSCA section 3(2)(B)(vi), should such items contain mercury, are not excluded from reporting under this final rule.

The Agency proposed that where EPA distinguishes between elemental mercury and mercury compounds, elemental mercury be limited to elemental mercury as described by its Chemical Abstracts Service Registry Number (CASRN 7439–97–6) and mercury compounds be inclusive of all instances where elemental mercury or a mercury compound is reacted with another chemical substance. Examples of mercury compounds in the TSCA Chemical Substance Inventory are listed in Table 2.

TABLE 2—LIST OF MERCURY COMPOUNDS

Chemical Abstracts Service Registry No.	Mercury compound
10045–94–0	Nitric acid, mercury(2+) salt (2:1).
100–57–2	Mercury, hydroxyphenyl-.
10112–91–1	Mercury chloride (Hg2Cl2).
10124–48–8	Mercury amide chloride (Hg(NH2)Cl).
103–27–5	Mercury, phenyl(propanoato-.kappa.O)-.
10415–75–5	Nitric acid, mercury(1+) salt (1:1).
104–60–9	Mercury, (9-octadecenoato-.kappa.O)phenyl-.
1191–80–6	9-Octadecenoic acid (9Z)-, mercury(2+) salt (2:1).
12068–90–5	Mercury telluride (HgTe).
13170–76–8	Hexanoic acid, 2-ethyl-, mercury(2+) salt (2:1).
13302–00–6	Mercury, (2-ethylhexanoato-.kappa.O)phenyl-.
1335–31–5	Mercury cyanide oxide (Hg2(CN)2O).
1344–48–5	Mercury sulfide (HgS).
1345–09–1	Cadmium mercury sulfide.
13876–85–2	Mercurate(2-), tetraiodo-, copper(1+) (1:2), (T-4)-.
138–85–2	Mercurate(1-), (4-carboxylatophenyl)hydroxy-, sodium (1:1).
141–51–5	Mercury, iodo(iodomethyl)-.
14783–59–6	Mercury, bis[(2-phenyldiazenecarbothioic acid-.kappa.S) 2-phenylhydrazidato-.kappa.N2]-, (T-4)-.
15385–58–7	Mercury, dibromodi-, (Hg-Hg).
15785–93–0	Mercury, chloro[4-[(2,4-dinitrophenyl)amino]phenyl]-.
15829–53–5	Mercury oxide (Hg2O).
1600–27–7	Acetic acid, mercury(2+) salt (2:1).
1785–43–9	Mercury, chloro(ethanethiolato)-.
19447–62–2	Mercury, (acetato-.kappa.O)[4-[2-[4-(dimethylamino)phenyl]diazenyl]phenyl]-.
20582–71–2	Mercurate(2-), tetrachloro-, potassium (1:2), (T-4)-.
20601–83–6	Mercury selenide (HgSe).
21908–53–2	Mercury oxide (HgO).
22450–90–4	Mercury(1+), amminephenyl-, acetate (1:1).
24579–90–6	Mercury, chloro(2-hydroxy-5-nitrophenyl)-.
24806–32–4	Mercury, [.mu.-[2-dodecylbutanedioato(2-).kappa.O1:.kappa.O4]]diphenyldi-.
26545–49–3	Mercury, (neodecanoato-.kappa.O)phenyl-.
27685–51–4	Cobaltate(2-), tetrakis(thiocyanato-.kappa.N)-, mercury(2+) (1:1), (T-4)-.
29870–72–2	Cadmium mercury telluride ((Cd,Hg)Te).
3294–57–3	Mercury, phenyl(trichloromethyl)-.
33770–60–4	Mercury, [3,6-dichloro-4,5-di(hydroxy-.kappa.O)-3,5cyclohexadiene-1,2-dionato(2-)]-.
3570–80–7	Mercury, bis(acetato-.kappa.O)[.mu.-(3′,6′-dihydroxy-3oxospiro[isobenzofuran-1(3H),9′-[9H]xanthene]-2′,7′diyl)]di-.
537–64–4	Mercury, bis(4-methylphenyl)-.
539–43–5	Mercury, chloro(4-methylphenyl)-.
54–64–8	Mercurate(1-), ethyl[2-(mercapto-.kappa.S)benzoato(2-).kappa.O]-, sodium (1:1).
55–68–5	Mercury, (nitrato-.kappa.O)phenyl-.
56724–82–4	Mercury, phenyl[(2-phenyldiazenecarbothioic acid.kappa.S) 2-phenylhydrazidato-.kappa.N2]-.
587–85–9	Mercury, diphenyl-.
592–04–1	Mercury cyanide (Hg(CN)2).
592–85–8	Thiocyanic acid, mercury(2+) salt (2:1).
593–74–8	Mercury, dimethyl-.
59–85–8	Mercurate(1-), (4-carboxylatophenyl)chloro-, hydrogen.
623–07–4	Mercury, chloro(4-hydroxyphenyl)-.
62–38–4	Mercury, (acetato-.kappa.O)phenyl-.
62638–02–2	Cyclohexanebutanoic acid, mercury(2+) salt (2:1).
627–44–1	Mercury, diethyl-.
6283–24–5	Mercury, (acetato-.kappa.O)(4-aminophenyl)-.
628–86–4	Mercury, bis(fulminato-.kappa.C)-.

TABLE 2—LIST OF MERCURY COMPOUNDS—Continued

Chemical Abstracts Service Registry No.	Mercury compound
629–35–6	Mercury, dibutyl-.
63325–16–6	Mercurate(2-), tetraiodo-, (T-4)-, hydrogen, compd. with 5-iodo-2-pyridinamine (1:2:2).
63468–53–1	Mercury, (acetato-.kappa.O)(2-hydroxy-5-nitrophenyl)-.
63549–47–3	Mercury, bis(acetato-.kappa.O)(benzenamine)-.
68201–97–8	Mercury, (acetato-.kappa.O)diamminephenyl-, (T-4)-.
72379–35–2	Mercurate(1-), triiodo-, hydrogen, compd. with 3-methyl2(3H)-benzothiazolimine (1:1:1).
7439–97–6	Mercury.
7487–94–7	Mercury chloride (HgCl2).
7546–30–7	Mercury chloride (HgCl).
7616–83–3	Perchloric acid, mercury(2+) salt (2:1).
7774–29–0	Mercury iodide (HgI2).
7783–33–7	Mercurate(2-), tetraiodo-, potassium (1:2), (T-4)-.
7783–35–9	Sulfuric acid, mercury(2+) salt (1:1).
7783–39–3	Mercury fluoride (HgF2).
7789–47–1	Mercury bromide (HgBr2).
90–03–9	Mercury, chloro(2-hydroxyphenyl)-.
94070–93–6	Mercury, [.mu.-[(oxydi-2,1-ethanediyl 1,2benzenedicarboxylato-.kappa.O2)(2-)]]diphenyldi-.

The Agency received a comment requesting an explanation for the Agency decision to not adopt the definition for "mercury compound" used by the Minamata Convention ("any substance consisting of atoms of mercury and one or more atoms of other chemical elements that can be separated into different components only by chemical reactions") (Ref. 8). Another commenter requested that the Agency clarify whether there is a concentration limit for classifying a material as elemental mercury and if EPA intends to require parties to report the manufacture or use of all mercury compounds, or only those that are listed on the TSCA Inventory (Ref. 9).

Consistent with the discussion in the proposed rule, the Agency did not define specific terms for purposes of the mercury inventory in the regulatory text. Instead, the Agency considered and synthesized descriptions of applicable definitions found in TSCA and implementing regulations, as well as the Minamata Convention. To that end, EPA proposed that "elemental mercury be limited to elemental mercury (CASRN 7439–97–6) and mercury compounds be inclusive of all instances where elemental mercury or a mercury compound is reacted with another chemical substance" (Ref. 3). In regard to the definition of "mercury compound" set forth in the Minamata Convention, EPA finds the language in the proposed rule to be clear and comparable to the definition under the Minamata Convention. EPA is therefore retaining its proposed characterization. EPA also provides an extensive, though not comprehensive, list of compounds for which reporting is required based on CASRN. EPA's statutory obligations are to prepare the mercury inventory (15 U.S.C. 2607(b)(10)(B)) and to develop identifications and recommendations to reduce the use of mercury (15 U.S.C. 2607(b)(10)(C)); nonetheless, EPA believes the resulting reporting will assist the United States in implementing the Minamata Convention.

In regard to establishing a concentration limit for elemental mercury, the statutory text at TSCA section 8(b)(10)(A)(i) uses the term "elemental mercury" without qualification. Therefore, the Agency believes that it is appropriate to identify elemental mercury by use of its CASRN and without a concentration limit.

B. Explanation of Supply, Use, and Trade

1. Overview of the Proposed Scope. Pursuant to TSCA section 8(b)(10)(B), EPA interprets the scope of the mercury inventory to include activities within the domestic and global commodity mercury market that fall under "supply, use, and trade of mercury in the United States." An inventory that adequately accounts for mercury in supply, use, and trade includes activities of persons who must report as described in TSCA section 8(b)(10)(D)(i): Manufacture, import, and otherwise intentionally use mercury in a manufacturing process. As such, the Agency proposed that persons required to report to the mercury inventory also include information on distribution in commerce, storage, and export to provide for the requisite inventory of mercury supply, use, and trade in the United States (Ref. 3).

2. Comments Related to Terminology. The Agency received comments requesting clarification of the descriptions of various terms, including: Mercury handled as waste, including elemental mercury destined for long-term storage; otherwise intentionally use mercury in a manufacturing process; impurities present in a final product; commercial purposes; mercury-added products and components; and "persons." As described in Unit III.A., the Agency did not define specific terms for purposes of the mercury inventory in the regulatory text. Instead, the Agency considered and synthesized descriptions of applicable definitions found in TSCA and implementing regulations, as well as the Minamata Convention.

• *Mercury Handled as Waste, Including Elemental Mercury Destined for Long-Term Storage.* EPA received comments on reporting of mercury by facilities that certify that their stored elemental mercury will not be sold,[1] including instances where mercury is produced as a mining byproduct and is managed as a hazardous waste (Ref. 10; Ref. 11; Ref. 12). Other comments addressed imported mercury-containing materials or wastes from which mercury can be recovered. Commenters emphasized that any exemption should

[1] Under section 6939f(g)(2) of the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6939f(g)(2)), U.S. Department of Energy is required to establish a facility by 2019 "for the purpose of long-term management and storage of elemental mercury generated within the United States." Until that facility is operational, the elemental mercury can be stored at facilities with RCRA permits, or onsite at some mining operations that generate elemental mercury. In both cases, the facility is allowed to store elemental mercury waste (without regard to the RCRA prohibition on hazardous waste storage in lieu of treatment and disposal) until the planned DOE facility is operational and accepts elemental mercury for long-term management and storage. All facilities or companies storing waste in this manner, whether in the mining sector or not, are required to certify in writing to the DOE that they will store the mercury under certain conditions set forth in RCRA, including not selling the mercury.

only apply to mercury that is clearly not intended to be used for commercial purposes (Ref. 10; Ref. 11).

EPA agrees with the commenters that elemental mercury waste, whether generated from mining or another process, that is being stored (or accumulated on-site and destined for storage) for eventual transfer to the DOE long-term mercury storage facility, should not be subject to the reporting requirements because it is waste, which is exempt from this rule in accordance with TSCA section 8(10)(D)(iii). If any person manufactures elemental mercury, including recovery from waste or as a byproduct from mining or any other activity, and has not made the decision to store it for transfer to the DOE storage facility or to otherwise handle it as waste, then that person must report that mercury. The Agency considers such mercury to be a commodity, not waste, and, therefore, part of the U.S. mercury supply.

EPA partially agrees with the comment that any mercury available for sale or otherwise available for commercial use including incidentally produced mercury should be captured in the inventory. Mercury produced as a byproduct and sold or otherwise made available for commercial use, for example by mines, must be reported (unless managed as waste), even if it may be considered incidentally produced. However, mercury that is present after the production of a commodity (*e.g.,* coal ash or cement), but serves no function in the final product, is not subject to reporting requirements set forth by this rule.

EPA agrees with the same commenter that if mercury-containing materials or waste are imported into the United States and the mercury is then recovered from such materials/waste, then this mercury must be reported upon recovery unless the mercury is immediately managed as waste under RCRA. An importer of such material or waste would only report the mercury if it is the same entity that recovers the mercury.

• *Otherwise Intentionally Use Mercury in a Manufacturing Process.* Commenters suggested that defining "otherwise intentionally use mercury in a manufacturing process" in the regulatory text would clarify reporting requirements (Ref. 13) and requested that EPA limit "manufacturing process" to the actual chemistry performed during such a process (Ref. 14).

In general, the Agency agrees with these comments. Notwithstanding differences in the statutory text (*i.e.,* "add" and "uses" in the context of how the mercury is used in a manufacturing process (see 15 U.S.C. 2607(b)(10)(C)(i) and (D)(i)), EPA believes that Congress meant to emphasize instances where persons intentionally introduce mercury into U.S. supply, use, and trade. As such, EPA agrees with commenters that, in the context of intentional use of mercury in a manufacturing process, it is the intentional use of elemental mercury or a mercury compound for a specific purpose (*e.g.,* a catalyst, cathode, reactant, reagent, etc.) that triggers reporting requirements. The Agency also appreciates the suggestion of how it might qualify persons and activities subject to reporting requirements by adding "intentional" in applicable regulatory text. However, to the extent that terms in the regulatory text are drawn from 15 U.S.C. 2602 and 2607(b)(10), the Agency prefers to align with the statutory terms as much as possible. EPA further clarified interpretations of these terms in this rule. Forthcoming support and outreach materials, which will be available on the EPA website six months prior to the reporting deadline, also will attempt to illustrate such terms and issues.

• *Impurities Present in a Final Product.* The Agency received comments regarding inconsistencies related to if and how impurities would be reported by persons who intentionally use mercury in a manufacturing process. The commenters argue that EPA's proposal to not require reporting of impurities for manufactured mercury and mercury-added products is inconsistent with the requirement to report impurities in end products that result from the intentional use of mercury in a manufacturing process (Ref. 8; Ref. 15). The commenters opined that reporting mercury present as an impurity (*i.e.,* reporting unintentional presence) would be overly burdensome, unreasonable, and would not add any real value to the mercury inventory (Ref. 8; Ref. 15).

In the proposed rule, the Agency described impurities in regard to whether "such chemical substances are intentionally generated and whether such substances are used for commercial purposes." In order to clarify, EPA finds the definition of "impurity" at 40 CFR 704.3 to be instructive: "chemical substance which is unintentionally present with another chemical substance." Thus, after reconsideration, the Agency determined that to require reporting of amounts of mercury unintentionally present in a final product would contradict the logic set forth by the Agency regarding the intentional addition of mercury where mercury remains present in the final product for a particular purpose (Ref. 3). EPA believes the quantity of mercury used in the manufacturing process, how the mercury is used and for what purpose, to which NAICS code a final product is distributed, and to which country(ies) the final product is exported provide adequate information about manufacturing processes that involve the intentional use of mercury to support the supply, use, and trade national inventory. Thus, the unintentional quantity of mercury in final products that result from such processes is not required. Should the Agency need additional information regarding any mercury present as an impurity, it may seek such information from the reporter, as necessary. Therefore, the Agency is not requiring the reporting of impurities for the mercury inventory and revised the regulatory text accordingly.

• *Commercial Purposes.* The Agency received a comment that requested clarity on the use of "commercial purpose," particularly within the context of the proposed rule preamble, which discussed certain byproducts and impurities the Agency proposed excluding from reporting (Ref. 11). Another commenter suggested that EPA's intentions would be clearer if it specified that to be reportable, the activities (*e.g.,* manufacture, import, otherwise intentionally use mercury in a manufacturing process) must be for commercial purposes (Ref. 10).

In the proposed rule, the Agency discussed its attempt to build on existing regulatory text applicable to TSCA section 8 reporting (Ref. 3). TSCA section 8(f) states "[f]or purposes of [TSCA section 8], the terms 'manufacture' and 'process' mean manufacture or process for commercial purposes." Thus, EPA reads "for commercial purposes" to apply to the TSCA section 8(b)(10)(D)(i) terms "manufactures" (including imports) and "otherwise intentionally uses mercury in a manufacturing process" (*i.e.,* comparable to "process" as defined at TSCA section 3(13)).

As used in 40 CFR 704.3, the terms defined with "for commercial purposes" incorporate ". . . with the purpose of obtaining an immediate or eventual commercial advantage . . ." for certain persons (*e.g.,* manufacturers, importers, and processors). In the proposed rule, the Agency described its rationale for instances where mercury would not be reported by focusing on "whether such chemical substances are intentionally generated and whether [byproducts and impurities] are used for commercial purposes" (Ref. 3). In the proposed regulatory text, however, EPA used a structure that used both sets of terms in

the same sentence (*e.g.*, "purpose of obtaining . . . commercial advantage" (must be reported) and "not used for commercial purposes" (not to be reported)). Based on comments received, the Agency amended the regulatory text to clarify this concept.

The Agency determined that the terms "with the purpose of obtaining an immediate or eventual commercial advantage" are more consistent with the statutory mandate at 15 U.S.C. 2607(b)(10)(C)(i) to "identify any manufacturing processes or products that *intentionally* add mercury" (emphasis added). EPA believes such terms (*e.g.*, "with the purpose of obtaining") more accurately align with the Agency's emphasis on the intent of persons required to report as opposed to "for commercial purposes." In addition, the Agency interprets "commercial advantage" to extend to benefits beyond profits, such as not incurring additional operational costs by continuing to use mercury rather than use non-mercury substances or technologies. Thus, to be required to report to the mercury inventory, persons must intentionally engage in activities that introduce mercury into supply, use, and trade in the United States with the purpose of obtaining an immediate or eventual commercial advantage. This interpretation and revised descriptions of supply, use and trade activities are discussed further in Unit III.B.5.

In the regulatory text of the final rule, therefore, the Agency omitted the use of "commercial purposes" and clarified how "with the purpose of obtaining an immediate or eventual commercial advantage" applies to activities for which reporting is required, as well as persons who must report.

• *Mercury-added Products and Components.* A commenter recommended that the Agency adopt the definition of the term "mercury-added product" as set forth in the Minamata Convention (Ref. 16), while another commenter requested that EPA clarify the distinction related to a "product that contains a component that is a mercury-added product" (Ref. 17). Other commenters requested clarifications, such as: Whether certain uses of mercury qualified as a component that is a mercury-added product (Ref. 9; Ref. 13; Ref. 17); how reporting requirements would apply to manufacturers who first incorporate mercury into a product versus subsequent manufacturers of products that contain the original mercury-added product (*e.g.*, the manufacture or import of Thimerosal (a mercury-containing preservative) and the manufacture or import of a vaccine containing Thimerosal) (Ref. 13); distinguishing between mercury-containing products involving chemical synthesis, alloy generating, blending and mixing operations versus articles with mercury-containing components (Ref. 9); and whether the proposed exemption for imported products that contain a component that is a mercury-added product would apply to exported products (Ref. 18).

In the proposed rule, EPA did not define "mercury-added product," but provided examples of intentional addition of mercury to a product by persons who manufacture a mercury-added product: "inserting mercury into a switch or battery, or mixing a mercury compound with other substances to formulate a topical antiseptic" (Ref. 3). In addition to the definition of "mercury-added product" in Article 2 of the Minamata Convention (*i.e.*, "a product or product component that contains mercury or a mercury compound that was intentionally added"), EPA also considered IMERC's definition, which is "any formulated or fabricated product that contains mercury, a mercury compound, or a component containing mercury, when the mercury is intentionally added to the product (or component) for any reason." The Agency sees merit in both definitions, but believes the definition in the Minamata Convention is more consistent with EPA's interpretation of the instruction at 15 U.S.C. 2607(b)(10)(C)(i) to "identify any manufacturing processes or products that intentionally add mercury." The Agency is of the view that the manufacture (other than import) of a mercury-added product is the "intentional addition of mercury where mercury remains present in the final product for a particular purpose" (Ref. 3). In other words, the intentional addition of mercury is the essential act by a manufacturer (other than importer) who makes a mercury-added product and, thus, triggers applicable reporting requirements.

In regard to a "component," EPA views this term as being similar to the definition of "article" in 40 CFR 704.3. The Agency views the inclusion of a mercury-added product that is a component within an assembled product differently from the act of intentionally inserting mercury (*i.e.*, chemical substance) into the component itself. As a result, the Agency is not requiring information to be reported on the manufacture (including import) of assembled products that include a component that is a mercury-added product. The Agency's rationale for reporting requirements applicable to products that contain a component that is a mercury-added product is provided in Unit III.D.1.b.

The example of the manufacture and use of Thimerosal illustrates when something is or is not a component. EPA agrees that only the domestic manufacturer who intentionally adds mercury to a product, or an importer who imports a product where mercury (*e.g.*, chemical substance) was inserted into the product, would report under this rule; subsequent manufacturers (including importers) of products that contain the original mercury-added product as a component would not report under this rule. Thimerosal is a mercury compound (*e.g.*, listed under CASRN 54–64–8 on EPA's TSCA Chemical Substance Inventory list), and is subject to reporting as a mercury compound or, if intentionally combined with other substances, is subject to reporting as a mercury-added product because the mercury compound is being intentionally added to the product. Therefore, Thimerosal is not a component.

• *Persons.* One commenter requested that the Agency specify the basis for defining what "person" means in the context of who may be subject to reporting (Ref. 19). EPA finds the definition at 40 CFR 704.3 to be instructive, in which a "person" includes "any individual, firm, company, corporation, joint venture, partnership, sole proprietorship, association, or any other business entity; any State or political subdivision thereof; any municipality; any interstate body; and any department, agency, or instrumentality of the Federal Government."

3. Requests for Exemptions or Exclusions from Reporting. The Agency also received specific requests for exemptions from reporting to the mercury inventory, including: Specific industry sectors (Ref. 16; Ref. 20; Ref. 21); specific activities (Ref. 22); use of tools and equipment (Ref. 14); distribution of products originating from others (Ref. 9); replacement parts (Ref. 16; Ref. 17); recycled waste (Ref. 17); and products excluded from the Minamata Convention on Mercury (Ref. 9). Given the level of specificity of such requests and explanation of Agency determinations, these discussions are set forth in the *Response to Comments* document for this rule (Ref. 5).

4. Exports of Certain Mercury Compounds. In regard to certain exports of mercury, the Agency notes that the export of elemental mercury has been prohibited since January 1, 2013 (15 U.S.C. 2611(c)(1)) and therefore the Agency is not requiring reporting on the export of elemental mercury from the

United States. TSCA, as of January 1, 2020, will also prohibit the export of certain mercury compounds: Mercury (I) chloride or calomel; mercury (II) oxide; mercury (II) sulfate; mercury (II) nitrate; and cinnabar or mercury sulphide (the statute uses the term "mercury sulphide" which is an alternative spelling of "mercury sulfide" as found in Table 2) (15 U.S.C. 2611(c)(7)).

In the proposed rule, the Agency noted that the inventory would benefit from the recent totals of at least one cycle of reporting prior to the effective date of the prohibition for exporting mercury compounds subject to TSCA section 12(c)(7) to measure trends in supply, use, and trade and provide a baseline for comparison of the changes in the amounts of other mercury compounds exported after the 2020 effective date (Ref. 3). The Agency received comments supporting the collection of such data: (1) To fulfill the express Congressional mandate to provide data on trade; (2) to determine the precise impact of the mercury compound export ban and associated trends, which would allow EPA to recommend whether the export ban should be further expanded to other compounds; and (3) to uphold obligations of the United States under the Minamata Convention (Ref. 11; Ref. 12). Thus, the Agency requires one-time reporting for those five compounds. Conversely, reporting for exports of mercury compounds that are not prohibited from export by TSCA section 12(c)(7) is required for every collection period. EPA previously determined that mercury-added products (including those containing elemental mercury or mercury compounds prohibited from export) generally are not prohibited from export and, therefore, are subject to the reporting requirements set forth in this rule.

5. Revised Descriptions of Supply, Use and Trade Activities. Based on comments received and the discussion presented elsewhere in Unit III.D., EPA modified the specific descriptions of supply, use, and trade activities to more accurately reflect the language of TSCA section 8(f) and the Agency's interpretation of the statutory mandate at TSCA section 8(b)(10)(C)(i). Thus, the Agency is requiring reporting of the following activities when intentionally undertaken to introduce mercury into supply, use, and trade in the United States with the purpose of obtaining an immediate or eventual commercial advantage:

- Import of mercury;
- Manufacture (other than import) of mercury;
- Import of a mercury-added product;
- Manufacture (other than import) of a mercury-added product; or
- Intentional use of mercury in a manufacturing process.

In addition, the following activities are part of supply, use, and trade of mercury:

- Distribution in commerce, including domestic sale or transfer, of mercury;
- Distribution in commerce, including domestic sale or transfer, of mercury-added products or products that result from the intentional use of mercury in a manufacturing process;
- Storage of mercury;
- Export of a mercury compound (unless specifically prohibited); or
- Export of mercury-added products or products that result from the intentional use of mercury in a manufacturing process.

As described in greater detail in Unit III.D., persons must first engage in the manufacture (including import) of mercury or mercury-added products or otherwise intentionally use mercury in a manufacturing process to be required to report to the mercury inventory.

C. Coordination With Existing Reporting Programs

TSCA section 8(b)(10)(D)(ii) directs the Agency to "coordinate the reporting . . . with the Interstate Mercury Education and Reduction Clearinghouse" to avoid duplication. Furthermore, TSCA section 8(a)(5)(a) states "[i]n carrying out [TSCA section 8], the Administrator shall, to the extent feasible . . . not require reporting which is unnecessary or duplicative." The Agency seeks to avoid collecting data on mercury that would duplicate information already reported to existing state and federal programs, and to coordinate with and complement those reporting programs as much as possible. While developing this rule (Ref. 3), EPA reviewed four data collection systems applicable to supply, use, and trade of mercury (including mercury-added products and mercury used in manufacturing processes):

- The IMERC Mercury-added Products Database, an online reporting database managed by the Northeast Waste Management Officials' Association (NEWMOA), which provides publicly available, national data on mercury used in products;
- The TSCA section 8(a) Chemical Data Reporting rule, which collects manufacturing, processing, and use information on certain chemical substances manufactured (including imported) in the United States;
- The Toxics Release Inventory (TRI) program, which collects data on toxic chemical releases to air, water and land from industrial facilities and pollution prevention activities in the United States; and
- The U.S. International Trade Commission Interactive Trade DataWeb (USITC DataWeb), which provides U.S. international trade statistics and U.S. tariff data to the public.

After reviewing these reporting programs, EPA designed the reporting requirements in this rule to be least burdensome for reporters already familiar with IMERC, CDR, TRI, and USITC DataWeb protocols (Ref. 3). Therefore, the Agency is incorporating comparable reporting concepts and tools from each program, as well as not requiring reporting in certain instances to increase the efficacy while decreasing the burden to the greatest extent practicable for reporting to a national mercury inventory.

1. Reporting Requirements for Existing CDR and IMERC Reporters. The Agency received several comments related to persons who submit mercury-related information to the Chemical Data Reporting database or the IMERC Mercury-added Products Database. In regard to reporting requirements applicable to both CDR and IMERC reporters, two commenters identified discrepancies (*e.g.*, non-alignment of reporting year/frequency and efforts to prohibit duplicative reporting) in the Agency's bifurcated reporting requirements for persons currently required to report to the IMERC Mercury-Added Products Database and under the CDR rule, and those who are not (Ref. 11; Ref. 12). Another commenter expressed concerns regarding the non-alignment of EPA and IMERC reporting years (Ref. 23). Some commenters argued that reporting such information to multiple systems would not be economically burdensome because the costs are relatively small and would not be duplicative because the reporting to different systems would occur in different years (Ref. 11; Ref. 12). Of particular concern to one commenter was a possible negative impact on the accuracy of the mercury inventory and the EPA's ability to make recommendations to reduce the use of mercury (Ref. 11). Conversely, two commenters supported the proposed approach to not require reporting from persons reporting comparable information to IMERC, although one commenter also supported alignment of the reporting years and requested that EPA codify a full exemption for manufacturers, including importers, that already report to IMERC (Ref. 17; Ref. 24). Finally, the Agency received comments recommending that EPA

adopt IMERC's submission deadline for reporting (April 1, 2020 and every three years thereafter) (Ref. 9; Ref. 18; Ref. 23; Ref. 24). Such issues are discussed in greater detail in the *Response to Comments* document for this rule (Ref. 5).

As discussed in the proposed rule, EPA cited TSCA section 8(a)(5)(A) as a basis for avoiding the collection of data that duplicated information already reported to the four data collection systems applicable to the supply, use, and trade of mercury: IMERC, CDR, TRI, and USITC DataWeb (Ref. 3). The Agency considered multiple, existing reporting systems that gather comparable data related to mercury pursuant to statutory text (15 U.S.C. 2607(a)(5)(A)). EPA also considered provisions of TSCA section 8(a)(5) that direct the Agency to "minimize the cost of compliance with this section and the rules issued thereunder on small manufacturers and processors; and . . . apply any reporting obligations to those persons likely to have information relevant to the effective implementation of this subchapter" (15 U.S.C. 2607(a)(5)(B) and (C)). In regard to comments arguing that requiring reporting for comparable data in two different systems is not duplicative if the reporting occurs in different years, the Agency maintains that this is a duplication of effort and EPA does not agree with the commenters' argument that the addition or avoidance of burden is not significant if it is relatively small. The language at TSCA section 8(a)(5) directs the Agency avoid duplicative reporting and reduce burden "to the extent feasible." Because EPA is able to obtain comparable data via EPA's CDR program or in coordination with IMERC, the Agency finds not requiring the reporting of overlapping reporting to the mercury inventory to be a feasible approach. To the extent that data elements may not align per differences in reporting years and frequency, the Agency does not view such discrepancies to be prohibitive of its ability to carry out statutory obligations at TSCA sections 8(b)(10)(B) and (C).

Based on comments received, the Agency is clarifying that a person who currently reports to CDR or IMERC is not categorically exempt from the mercury inventory reporting requirements set forth in this rule. Instead, the bifurcated reporting structure is designed to omit only those quantitative data elements already collected by CDR and IMERC to avoid duplication in the collection, calculation, verification, review, certification, reporting, and maintenance of records pursuant to TSCA section 8(a)(5). The Agency's goal is to create a "comprehensive inventory such that existing data gaps would be eliminated, where feasible [and] . . . complement amounts of quantitative mercury data already collected by, but without overlapping with, reporting requirements," as well as "decrease the burden of reporting to the greatest extent practicable" (Ref. 3). These goals are guided by statutory mandates not only in TSCA section 8(b)(10), but also in TSCA section 8(a)(5). Thus, while recognizing that there is a non-alignment of CDR and IMERC reporting years, the Agency believes supplementing data reported through this rule with data from CDR and IMERC creates a totality of available data that will provide an adequate basis to observe long-term trends in mercury supply, use, and trade. As such, the Agency determined that requiring reporting for comparable data to two systems would be duplicative even if the CDR and IMERC data represent information from different years. Therefore, requiring duplicative data to be reported from reporters who also report to CDR and IMERC would result in additional burden and is unnecessary.

Finally, EPA understands the interest in aligning with IMERC's submission deadline. However, the statutorily mandated publication date for the mercury inventory was April 1, 2017 and every three years thereafter, which falls on IMERC's data submission date. EPA has a legal responsibility to publish on or before the date set forth in TSCA section 8(b)(10)(B), which means that EPA must publish the inventory on or before the day IMERC reporters must submit data to IMERC. While mindful of incongruities in reporting frequency and years, EPA believes that the reporting schedule and achieve this goal to the greatest extent practicable. As a result, the reporting requirements, including efforts to incorporate data collected by CDR and IMERC while avoiding overlap among CDR and IMERC data elements, will enhance its ability to collect and publish robust data on mercury supply, use, and trade in the United States (15 U.S.C. 2607(b)(10)(B)) and to "identify any manufacturing processes or products that intentionally add mercury; and . . . recommend actions, including proposed revisions of Federal law or regulations, to achieve further reductions in mercury use" (15 U.S.C. 2607(b)(10)(C)).

2. Reporting Requirements for Products Regulated by Other Federal Agencies. One commenter requested that EPA not require reporting for uses of mercury regulated by other federal agencies (*e.g.*, pharmaceuticals) (Ref. 13). The commenter cited drugs, as regulated by FDA, and animal vaccines, as regulated by the U.S. Department of Agriculture (USDA), and noted that FDA and USDA regulations already require reporting information regarding the use of mercury in these products and, therefore, should not be collected by EPA.

The Agency disagrees. While these agencies may regulate mercury, they do not collect the data necessary to support the national inventory required by TSCA section 8(b)(10). As such, EPA does not view the reporting requirements to be duplicative of the requirements highlighted by the commenter and, therefore, is not exempting reporting of such uses of mercury.

D. Persons and Information Subject to This Rulemaking

TSCA section 8(b)(10)(D)(i) states "any person who manufactures mercury or mercury-added products or otherwise intentionally uses mercury in a manufacturing process shall make periodic reports to the Administrator." As explained in Unit III.B., EPA interprets the statutory text at TSCA sections 8(b)(10)(B), 8(b)(10)(D)(i), and 8(b)(10)(D)(iii) as applying to intentional acts that introduce mercury into supply, use, and trade in the United States. EPA reads TSCA section 8(b)(10)(D)(i) to narrow potential reporters to persons who first manufacture mercury or mercury-added products or otherwise intentionally use mercury in a manufacturing process prior to other activities such as storage, distribution, and export. Descriptions of persons who must report under this rule and tables illustrating applicable reporting requirements are detailed in Unit III.D.1.

1. Persons Who Must Report. In addition to persons described in the following subsections and tables, EPA will provide examples of persons who will and will not be required to report under this regulation in reporting instructions and other support materials.

a. Persons Who Manufacture (Including Import) Mercury. As described in Unit III.C., the Agency sought to decrease the burden of reporting to the greatest extent practicable by, among other things, complementing without overlapping existing reporting requirements related to mercury and mercury-added products. As such, persons who manufacture (including import) in excess of 2,500 lbs. for elemental mercury or in excess of 25,000 lbs. for mercury compounds for a specific

reporting year are not required to report amounts manufactured (including imported) or exported that are already reported per the CDR rule. Such persons, however, are required to provide quantitative data on storage and distribution in commerce, as well as qualitative and contextual information related to all applicable data elements under the proposed rule (see Table 3. Information to Report—Mercury). In further efforts to decrease reporting burdens, the Agency will provide pre-selected lists of mercury compounds to streamline reporting requirements as much as possible.

TABLE 3—INFORMATION TO REPORT—MERCURY

Persons who must report	Applicable reporting requirements
Persons who manufacture (including import) mercury in amounts greater than or equal to 2,500 lbs. for elemental mercury or greater than or equal to 25,000 lbs. for mercury compounds for a specific reporting year (*i.e.*, current CDR reporters).	—Country(ies) of origin for imported mercury. —Country(ies) of destination for exported mercury. —Amount of mercury stored (lbs.). —Amount of mercury distributed in commerce (lbs.). —NAICS code(s) for mercury distributed in commerce.
All other persons who manufacture (including import) mercury	—Amount of mercury manufactured (lbs.). —Amount of mercury imported (lbs.). —Country(ies) of origin for imported mercury. —Amount of mercury exported (lbs.), except mercury prohibited from export at 15 U.S.C. 2611(c)(1) and (7). —Country(ies) of destination for exported mercury. —Amount of mercury stored (lbs.). —Amount of mercury distributed in commerce (lbs.). —NAICS code(s) for mercury distributed in commerce. —As applicable, specific mercury compound(s) from preselected list.

b. Persons Who Manufacture or Import Mercury-added Products. EPA proposed to require reporting for the manufacture (including import) of mercury-added products, except for: (1) Import of an assembled product that contains mercury solely within a component that is a mercury-added product; and (2) domestic manufacture of an assembled product unless the person first manufactures or imports the mercury-added product that can be used as a component. The Agency determined that this distinction was appropriate after reviewing the data reported to the IMERC Mercury-Added Products Database and comparing the companies that reported national sales data for individual mercury-added products (including components), as well as items that contain a component that is a mercury-added product (Ref. 25). For example, the IMERC database lists a product name (*e.g.*, flat panel display, projection TV, make and model of vehicle) and component (*e.g.*, lamp, bulb). In the proposed rule, the Agency cited concerns that requiring reporting for assembled products where mercury is present solely within a previously manufactured component would result in double counting and thereby could negatively affect the reliability of future mercury inventory updates, as well as the potential to create undue burden for certain importers (Ref. 3). The Agency based this determination on its emphasis on the intentional insertion of mercury into a product as the introduction of mercury via a mercury-added product into supply, use, and trade in the United States. For imported assembled products that contain a component that is a mercury-added product, the Agency also considered the degree to which certain importers would know the mercury content, if any, of the assembled products they import, as well as the additional breadth, and therefore burden, that including such imports at this time would entail. The Agency notes that its specific reporting requirements (see Unit III.D.4.b.) include mercury-added products that are likely to be used as components in assembled products. As discussed in this section, EPA's combined general, specific, and contextual reporting requirements are designed not only to provide information that are expected to identify mercury-added products that are components within assembled products, but also to avoid unnecessary, duplicative, and burdensome reporting as much as feasible (15 U.S.C. 2607(a)(5)).

The Agency received comments related to instances where mercury is present in a product as a component that is a mercury-added product. Some commenters requested that the Agency require reporting for the manufacture (including import) of such products (Ref. 11; Ref. 12; Ref. 20; Ref. 23), while other commenters supported the proposed approach to not require such reporting (*e.g.*, advanced manufacturing equipment that contains components that are mercury-added products and supply chains where the mercury-added product may be incorporated into several iterations of other components before being used in a final assembled product) (Ref. 9; Ref. 13; Ref. 17; Ref. 18; Ref. 26). Commenters requesting that the Agency require reporting for products that contain a component that is a mercury-added product believe that the proposed approach would underestimate mercury use in products and hamper EPA's ability to fill data gaps and make further recommendations for mercury reductions. The commenters also argued that not requiring reporting for products that contain mercury-added components is neither authorized by nor consistent with the purpose of the statute and is inconsistent with IMERC and Minamata Convention definitions of "mercury-added product." Such issues are discussed in greater detail in the *Response to Comments* document for this rule (Ref. 5).

The statutory text describes who must report to the mercury inventory: "any person who manufactures mercury or mercury-added products or otherwise intentionally uses mercury in a manufacturing process . . . at such time and including such information as the Administrator shall determine by rule" (15 U.S.C. 2607(b)(10)(D)(i)). In addition to the development of the inventory itself (15 U.S.C. 2607(b)(10)(B)), the Agency interprets the ultimate purpose of the inventory as identifying manufacturing processes or products that intentionally add mercury and recommending actions to achieve further reductions in mercury use (15 U.S.C. 2607(b)(10)(C)). When developing this rule, the Agency considered statutory requirements applicable to all of TSCA section 8:

Prohibition of "unnecessary or duplicative" reporting (15 U.S.C. 2607(a)(5)(A)) and minimization of the cost of compliance for small manufacturers and processors (15 U.S.C. 2607(a)(5)(B)). Thus, EPA will carry out an inventory and require reporting consistent with the statute that avoids duplication of information already reported to existing state and federal programs and avoids unnecessary reporting burdens.

TSCA section 8(b)(10)(C)(i) mandates that in carrying out the inventory, EPA must "identify any manufacturing processes or products that intentionally add mercury." Some commenters suggested that the statute requires EPA to collect information on all products that contain mercury, including those that contain mercury only because they include a mercury-added product as a component. EPA interprets the statutory text to only require the identification of the *types* of products where mercury is intentionally added such that EPA would be able to make recommendations for reducing such use. Based on its review of the information available in the IMERC database (Ref. 25), EPA believes that it will be able to identify the various types of mercury-added products where mercury is intentionally added (*e.g.,* mercury-added lamps) without requiring the reporting on the manufacture of more complex products where mercury is contained within a component (*e.g.,* vehicle containing mercury-added lamp in headlight).

In identifying products where mercury is intentionally added, the Agency interprets the statute as giving it discretion over what information it may require to be reported, including from certain manufacturers and types of products. TSCA section 8(b)(10)(D)(i) requires periodic reports to assist in the preparation of the inventory "at such time and including such information as the Administrator shall determine by rule." EPA has determined that fulfilling the mandate to identify products that intentionally add mercury and make recommendations to achieve reduction in mercury use does not require reporting for assembled products, as EPA is not convinced that all products that contain a component that is a mercury-added product should be viewed as "products that intentionally add mercury." For example, a domestic automobile manufacturer may not know that a component of the car contains mercury and arguably, therefore, has not intentionally added mercury to the car for the purposes of TSCA section 8(b)(10)(C)(i). Similarly, an automobile importer may not know that a component of the car contains mercury. Since the import is the manufacture for purposes of TSCA, the product arguably is not a product to which mercury has intentionally been added per TSCA section 8(b)(1)(C)(i) for this reason as well.

The addition of a mercury-added product as a component to a more complex, assembled product does not change the nature or the quantity of mercury within the component, and, for a product assembled domestically, would result in the double counting of that specific quantity of mercury since EPA would receive reports both on the manufacture of the component and the manufacture of the assembled product. Even without receiving reports from manufacturers of assembled products, EPA can glean information about types of mercury-added products from the reports by manufacturers/importers of mercury-added products, which can be used as components. The information reported on NAICS codes by a person who manufactures (or imports) mercury-added products that can be used as components (*e.g.,* mercury-added lamp), can be used to help the Agency identify the types of domestically manufactured assembled products (*e.g.,* light truck and utility vehicle manufacturing (NAICS code 336112)) likely to contain components that are mercury-added products. Thus, the full set of reporting requirements work together to account for and describe mercury supply, use, and trade in the United States, while avoiding unnecessary or duplicative reporting.

With respect to imports, based on the Agency's review of the information available in the IMERC database (Ref. 25) and its rationale set forth in the preceding paragraph, EPA believes that the reporting requirements similarly will enable it to identify the *types* of mercury-added products imported into the United States (*i.e.,* both mercury-added products that can be used as components and those assembled products that contain a mercury-added component). Reporting is required for the import of mercury-added products that can be used as components in assembled products. This will give EPA a clearer understanding of the types of components that exist along with information on the quantity of mercury in those components. While reporting is not required on the import of assembled products that contain mercury-added components, the reporting requirements and data collected from manufacturers/importers of mercury products that can be used as components are expected to help alleviate the uncertainties associated with the types of imported assembled products that may contain such components. For example, the Agency can use NAICS codes reported for domestically-manufactured assembled products to better understand the specific types of imported assembled products that may contain mercury within a component part. In this context, the reporting requirements can enhance the understanding of mercury supply, use, and trade in the United States while helping to minimize the cost of compliance for importers of assembled products.

The baseline direction from Congress was to identify products that intentionally add mercury. EPA concludes this is best done, at this stage, by requiring reporting only from the manufacturers who initially insert mercury into products and importers of mercury-added products that may be used as components in assembled products, but not assembled products themselves. EPA is not requiring a reporter who manufactures (including imports) mercury components to identify whether or how the mercury-added product is used as a component; instead, EPA intends to use NAICS codes to identify such uses. By design, the general reporting requirements first identify the total quantity of mercury in products manufactured (other than imported), distributed in commerce, or exported for a reporting year (*i.e.,* prioritize reporting on the amounts of mercury in supply, use, and trade activities (see Unit III.B.5.)). Thereafter, specific and contextual reporting requirements (*e.g.,* the category/sub-category of mercury-added products and NAICS code(s) for manufacturing categories, and countries of origin and destination for imports and exports) further illustrate how reported quantities of mercury move through supply, use, and trade. EPA believes this is appropriate because it can collect quantitative data from persons who report for domestic manufacture and import of mercury-added products that can be used as components, and use contextual (*i.e.,* qualitative) reporting to better understand how those components are incorporated into assembled products. The Agency could, as appropriate, use such domestic quantitative data in concert with other available data on imported assembled products in a specific product category to draw comparisons and, should they be relevant, focus recommendations for reducing mercury for both domestic and foreign assembled products. Even if this approach is not able to directly account for amounts of mercury within the

mercury-added products that are components of assembled products, the Agency determined that its ability to identify categories—and potentially more specific types—of assembled products will allow it to satisfy mandates at TSCA sections 8(b)(10)(B) and (C). While a reporter would not be required to identify whether or how the mercury-added product is used as a component, the reporting requirements should provide ample information to shed light on the use of the mercury, to satisfy the mandate to identify products that intentionally add mercury, including components being manufactured domestically and imported, and allow EPA to "recommend actions [. . .] to achieve further reductions in mercury use" including recommendations related to products containing mercury components (15 U.S.C. 2607(b)(10)(C)(ii)).

EPA is mindful that the global implementation of the Minamata Convention should result in a decrease in the manufacture, import, and export of many mercury-added products that are commonly used as components in products, discourage the use of such products as components, and generally increase the knowledge of manufacturers, importers, exporters, and consumers regarding the types of assembled products that contain components that are mercury-added products. EPA will evaluate whether this expected downward trend comes to fruition by monitoring trends in the importation of mercury components and its described approach to better understand the types of domestically-manufactured and imported assembled products that may contain mercury in a component part. As necessary, the Agency will use such data to consider modifying reporting requirements or to recommend appropriate actions to reduce the use of mercury.

As described in Unit III.C., persons who report to IMERC identify the amount of mercury sold in mercury-added products that may be manufactured, distributed, or imported. The Agency considers the amount of mercury reported to IMERC as sold to be comparable to the amount of mercury to be reported under the rule as distributed in commerce. As such, EPA is not requiring persons who report to IMERC to report amounts of mercury distributed in commerce in mercury-added products. However, those persons must report quantitative and qualitative information for other applicable data elements (*e.g.*, manufacture, import, and export of mercury-added products). Such persons are also required to report contextual information applicable to amounts, if any, of mercury in mercury-added products manufactured, imported, distributed in commerce, or exported (see Table 4. Information to Report—Mercury-Added Products). In further efforts to decrease reporting burdens, the Agency will provide pre-selected lists of mercury-added product categories to streamline reporting requirements as much as possible.

TABLE 4—INFORMATION TO REPORT—MERCURY-ADDED PRODUCTS

Persons who must report	Applicable reporting requirements
Persons who manufacture (including import) mercury-added products, except a product that contains a component that is a mercury-added product, who currently report to IMERC.	—Amount of mercury in manufactured products (lbs.). —Amount of mercury in imported products (lbs.). —Country(ies) of origin for imported products. —Amount of mercury in exported products (lbs.). —Country(ies) of destination for exported products. —NAICS code(s) for products distributed in commerce. —As applicable, specific product category(ies) and subcategory(ies) from pre-selected list.
All other persons who manufacture (including import) mercury-added products, except a product that contains a component that is a mercury-added product.	—Amount of mercury in manufactured products (lbs.). —Amount of mercury in imported products (lbs.). —Country(ies) of origin for imported products. —Amount of mercury in exported products (lbs.). —Country(ies) of destination for exported products. —Amount of mercury in products distributed in commerce (lbs.). —NAICS code(s) for products distributed in commerce. —As applicable, specific product category(ies) and subcategory(ies) from pre-selected list.

c. Persons Who Otherwise Intentionally Use Mercury in a Manufacturing Process. As described in Unit III.B., TSCA section 8(b)(10)(D)(i) includes persons who intentionally use mercury in a manufacturing process amongst those who must report. The Agency believes that persons who otherwise intentionally use mercury in a manufacturing process may currently report to existing data collection programs in the United States, but because the reporting requirements for the mercury inventory differ from those programs, EPA does not view the reporting requirements to be duplicative or unnecessary. As such, the general, specific, and contextual reporting requirements are intended to provide a complete picture of uses for which little information is currently available (see Table 5. Information to Report—Otherwise Intentional Use of Mercury in a Manufacturing Process). As discussed in Unit III.D.1.b., the combination of general, specific, and contextual reporting requirements will assist the Agency to adequately "identify any processes . . . that intentionally add mercury" 15 U.S.C. 2607 8(b)(10)(C)(i). In further efforts to decrease reporting burdens, the Agency will provide pre-selected lists of manufacturing processes and attendant uses of mercury to streamline reporting requirements as much as possible.

TABLE 5—INFORMATION TO REPORT—OTHERWISE INTENTIONAL USE OF MERCURY IN A MANUFACTURING PROCESS

Persons who must report	Applicable reporting requirements
Persons who otherwise intentionally use mercury in a manufacturing process, other than the manufacture of a mercury compound or a mercury-added product.	—Amount of mercury intentionally used (lbs.) in pre-selected list of manufacturing processes. —Amount of mercury stored (lbs.). —Country(ies) of destination for exported final product(s). —NAICS code(s) for mercury in final product(s) distributed in commerce. —As applicable, specific manufacturing process from preselected list. —As applicable, specific use of mercury in manufacturing process from pre-selected list.

2. Persons Not Required to Report. The Agency received various comments requesting clarification of persons who would not be required to report to the mercury inventory.

i. *Persons Who Do Not First Manufacture, Import, or Otherwise Intentionally Use Mercury.* EPA determined that persons who only trade (*e.g.,* brokering, selling wholesale, shipping, warehousing, repackaging, or retail sale), but do not manufacture or import mercury or mercury-added products, should not be subject to the proposed reporting requirements (Ref. 3). Aside from its reading of TSCA section 8(b)(10)(D)(i), the Agency is concerned that requiring reporting from such entities risks: (1) Double counting of mercury as it moves through supply chains; and (2) undue burden or liability on entities that are not likely to be aware if or how mercury is present in products that they trade. Several commenters requested clarifications regarding this determination, including modifications to ensure that the exclusion will not result in transactions involving mercury that go unreported within the context of supply, use, and trade and to prevent duplicative reporting by focusing on products traded instead of the persons engaged in trade (Ref. 11; Ref. 12). Another commenter suggested that such an exemption should not apply to any persons that would be defined as a manufacturer, importer, or exporter (Ref. 12).

EPA interprets the statutory text on who should report at 15 U.S.C. 2607(b)(10)(D)(i) as applicable to "intentional acts that introduce mercury into supply, use, and trade in the United States." EPA specified in the proposed rule that this applies to "persons who *first* manufacture mercury or mercury-added products or otherwise intentionally use mercury in a manufacturing process" (emphasis added) (Ref. 3). EPA recognizes that certain transactions (*e.g.,* resale, incorporation of a purchased component that is a mercury-added product into equipment) may not be captured with this structure. However, the Agency believes that focusing on the initial introduction of mercury to the market prevents the possibility of double counting or undue burden (see 15 U.S.C. 2607(a)(5)(A and B)) which could occur if entities that do not first introduce mercury to supply, use, and trade were required to report to the inventory. EPA revised the regulatory text in the final rule to improve clarity.

ii. *Persons Who Generate, Handle, or Manage Mercury-containing Waste.* Persons "engaged in the generation, handling, or management of mercury-containing waste, unless that person manufactures or recovers mercury in the management of that waste" are not required to report to the mercury inventory (15 U.S.C. 2607(b)(10)(D)(iii)). EPA interprets the statute here to mean for immediate or eventual commercial purposes (see also "Mercury Handled as Waste, Including Elemental Mercury Destined for Long-Term Storage" in Unit III.B.2). EPA will provide examples of such persons in reporting instructions and other support materials.

iii. *Persons Who Manufacture Mercury as an Impurity.* Persons who manufacture (including import) mercury as an impurity are not required to report to the mercury inventory (see also "Impurities Present in a Final Product" in Unit III.B.2.). EPA will provide examples of such persons in reporting instructions and other support materials.

iv. *Persons Engaged in Activities Involving Mercury Not with the Purpose of Obtaining an Immediate or Eventual Commercial Advantage.* Persons who do not manufacture (including import) mercury or mercury-added products or otherwise intentionally use mercury in a manufacturing process with the purpose of obtaining an immediate or eventual commercial advantage are not required to report to the mercury inventory (see also "Commercial Purposes" in Unit III.B.2.). In addition, EPA will provide examples of such persons in reporting instructions and other support materials.

v. *Manufacture or Import of a Product that Contains a Component that is a Mercury-added Product.* EPA maintains that requiring reporting on the use of a mercury-added product as a component in the manufacture (other than import) of another product for a person who did not first manufacture (other than import) the mercury-added product would constitute double counting. The Agency's rationale is explained in detail in Unit III.D.1.b. To the extent that the Agency is not requiring persons who import products that contain a component that is a mercury-added product to report, the reporting requirements do not prevent the identification of such products. The decision to not require reporting on such products also will not prevent the Agency from making recommendations "to achieve further reductions in mercury use" (15 U.S.C. 2607(b)(10)(C)(ii)). In order to clarify and streamline reporting requirements related to products that contain a component that is a mercury-added product, the Agency modified the structure of the regulatory text in this final rule. In addition, EPA will provide examples of such persons in reporting instructions and other support materials. Those materials will be available on the EPA website six months prior to the reporting deadline.

3. Reporting Units and Threshold. As discussed in Unit III.C., the Agency compared existing state and federal reporting databases applicable to the supply, use, and trade of mercury. EPA conducted this review in an attempt not only to eliminate duplicative reporting requirements, but also to incorporate applicable features of such programs, including the consideration of respective reporting thresholds.

The statutory text at TSCA section 8(b)(10) is silent on a reporting threshold; however, TSCA section 8(b)(10)(C) directs the Agency to "identify any manufacturing processes or products that intentionally add

mercury." Based on: (1) The interpretation that the direction to "identify any" applies to any amount of mercury in a manufacturing process or product; and (2) concerns related to the potential adverse effects on human health and the environment resulting from releases of mercury, EPA proposed to apply the reporting requirements to any person who manufactures (including imports) mercury or mercury-added products or otherwise intentionally uses mercury in a manufacturing process regardless of the amount of mercury at issue (Ref. 3).

The Agency received comments in support of the proposal to not establish a *de minimis* threshold for reporting (Ref. 11; Ref. 12; Ref. 23), as well as comments suggesting EPA establish minimum units for which persons should report and a threshold under which persons should not report to the mercury inventory (Ref. 15; Ref. 21; Ref. 24; Ref. 26; Ref. 27). Specific recommendations from commenters included: a minimum reportable value of 1 pound (Ref. 27), parts per million amounts for impurities (Ref. 15), and less than 1 kilogram for an annual total for certain activities (Ref. 28). Commenters also expressed concerns with the reasonableness and burden associated with being able to detect, as well as calculate annual totals, for trace amounts of mercury in certain products and processes (Ref. 15; Ref. 24). Finally, commenters recommended that reporting thresholds be established in SI/metric units due to prevalent market practices for identifying mercury content in products and for greater consistency with IMERC reporting requirements (Ref. 18; Ref. 23).

EPA appreciates the suggestion to offer multiple/alternative units of measurement for reporting amounts of mercury. However, EPA believes that the pound (lb.) as a unit of measurement is the best choice based on it being a unit familiar to most potential reporters and consistent with the reporting provided by IMERC, CDR, and TRI. The reporting application is designed such that persons seeking to report amounts equal to or less than one pound during a reporting year would be directed to round amounts of mercury to "1 lb."

In regard to a reporting threshold, EPA understands that certain persons may use small amounts of mercury over the course of a reporting year, but believes that it is not appropriate to establish a *de minimis* threshold. As explained in the proposed rule (Ref. 3), this decision is based on a review of statutory text at 15 U.S.C. 2607(b)(10)(C), which EPA interprets to require reporting for any amount of mercury. However, to address the concerns expressed, and as an alternative to a reporting threshold, EPA accepts the suggestions of commenters to offer a minimum unit. Any person that manufactures (including imports) mercury or mercury-added products or any person that otherwise intentionally uses mercury in a manufacturing process in an amount equal to or less than one pound during a reporting year would be directed to round amounts of mercury to "1 lb." Because the Agency is not requiring reporting for impurities (see also "Impurities Present in a Final Product" in Unit III.B.2.), EPA believes the suggested parts per million unit of measurement associated with impurities is no longer applicable. In instances where persons subject to the reporting requirements may be using mercury in small amounts on a per unit basis, the Agency will provide additional examples in reporting instructions and support materials designed to assist reporters. Those materials will be available on the EPA website six months prior to the reporting deadline.

4. Reporting Requirements. TSCA section 8(b)(10)(B) sets the general scope of the inventory as the "mercury supply, use, and trade in the United States." EPA interprets the core elements to be covered in the mercury inventory to be the amount of mercury used in the activities within the mercury market described in Unit III.B. (*i.e.,* manufacture, import, export, storage, distribution in commerce, and otherwise intentional use of mercury in a manufacturing process). EPA also determined that, for certain data elements, requiring reporting of more specific information would help to better contextualize reported quantities of mercury used in domestic and global supply, use, and trade. The general, specific, and contextual reporting requirements are described in this section.

a. General Reporting Requirements. EPA considers "supply" to include manufacture and storage, "use" to include otherwise intentional use of mercury in a manufacturing process, and "trade" to include import, export, and distribution in commerce. The Agency determined that accounting for such activities is necessary to fulfill statutory mandates at TSCA sections 8(b)(10)(B) and (C). Therefore, for persons required to report (as described in Unit III.D.), EPA is requiring reporting quantitative data for mercury, mercury-added products, and otherwise intentional use of mercury in a manufacturing process (as qualified from existing terms as discussed in Unit III.B.) as follows:

i. *Importers of mercury:* Amount of mercury imported per year (lbs.); Amount of mercury stored per year (lbs.); Amount of mercury distributed in commerce per year (lbs.); Amount of mercury exported per year (lbs.).

ii. *Manufacturers (other than importers) of mercury:* Amount of mercury manufactured (other than imported) per year (lbs.); Amount of mercury stored per year (lbs.); Amount of mercury distributed in commerce per year (lbs.). Amount of mercury exported per year (lbs.).

iii. *Importers of a mercury-added product:* Amount of mercury in imported products per year (lbs.); Amount of mercury in products distributed in domestic commerce per year (lbs.); Amount of mercury in exported products per year (lbs.).

iv. *Manufacturers (other than importers) of a mercury-added product:* Amount of mercury in manufactured (other than imported) products per year (lbs.); Amount of mercury in products distributed in commerce per year (lbs.); Amount of mercury in exported products per year (lbs.).

v. *Persons who intentionally use mercury in manufacturing processes:* Amount of mercury used in a manufacturing process per year (lbs.); Amount of mercury stored per year (lbs.).

EPA understands that certain persons may report for multiple activities associated with supply, use, and trade of mercury. For example, a person may import mercury and manufacture mercury-added products. As such, the Agency is designing the quantitative data elements for reporting requirements such that a person could report both as an "importer of mercury" and "manufacturer of mercury-added products," but only report for the specific activity in which they engage. The Agency expects there may be certain persons engaged in the supply, use, and trade of mercury who might not be accounted for in the inventory, but EPA views this omission of prospective reporters as an opportunity to limit undue burden and avoid double counting. Thus, the Agency is limiting the persons who must report at TSCA section 8(b)(10)(D)(i) to only those persons described in Unit III.D.

b. Specific Reporting Requirements. To better understand the categories of mercury-added products and otherwise intentional use of mercury in a manufacturing process, the Agency is requiring reporters to identify the specific categories and subcategories of products and functional uses for which quantitative data is reported. The Agency believes this is an appropriate

interpretation of the direction to "identify any manufacturing processes or products that intentionally add mercury," which, in turn, could inform how to "recommend actions, including proposed revisions of Federal law or regulations, to achieve further reductions in mercury use" (15 U.S.C. 2607(b)(10)(C)). Persons required to report must provide the total amount of mercury used during the reporting year in pounds for general reporting activities associated with supply, use, and trade, rather than per category and subcategory. EPA based this decision on issues concerning burden and confidential business information that could be created by reporting quantitative information for increasingly specific categories and subcategories.

i. Mercury-added products. Based on the current knowledge of mercury-added products available in the marketplace, including skin products manufactured abroad and sold illegally in the United States (Ref. 29), EPA is finalizing the following list of categories and subcategories of mercury-added products:

- *Batteries:* Button cell, silver; Button cell, zinc-air; Button cell, alkaline; Stacked button cell batteries; Manganese oxide; Silver oxide; Mercuric oxide, non-button cell; Button cell, mercuric oxide; Button cell, zinc carbon; Other (specify).
- *Dental amalgam.*
- *Formulated products (includes uses in cosmetics, pesticides, and laboratory chemicals):* Skin-lightening creams; Lotions; Soaps and sanitizers; Topical antiseptics; Bath oils and salts; Preservatives (*e.g.*, for use in vaccines and eye-area cosmetics when no preservative alternatives are available); Pharmaceuticals (including prescription and over-the-counter drug products); Cleaning products (not registered as pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act); Pesticides; Paints; Dyes; Reagents (*e.g.*, catalysts, buffers, fixatives); Other (specify).
- *Lighting, lamps, bulbs:* Linear fluorescent; Compact fluorescent; U-tube and circular fluorescent; Cold cathode fluorescent; External electrode fluorescent; Mercury vapor; Metal halide; High pressure sodium; Mercury short arc; Neon; Other (specify).
- *Measuring instruments:* Barometer; Fever thermometer; Flow meter; Hydrometer; Hygrometer/psychrometer; Manometer; Non-fever thermometer; Pyrometer; Sphygmomanometer; Other (specify).
- *Pump seals.*
- *Switches, relays, sensors, valves:* Tilt switch; Vibration switch; Float switch; Pressure switch; Temperature switch; Displacement relay; Wetted reed relay; Contact relay; Flame sensor; Thermostat; Other (specify).
- *Miscellaneous mercury-added products:* Wheel weights; Wheel rotation balancers/stabilizers; Firearm recoil suppressors; Carburetor synchronizers; Joint support/shock absorption bands; Other (specify).

ii. Intentional mercury use in manufacturing processes. EPA received comment on the proposed rule and has refined the following manufacturing processes for which mercury may be intentionally used: Chlorine production (*e.g.*, mercury-cell chlor-alkali process); Acetaldehyde production; Sodium/potassium methylate/ethylate production; Polyurethane/plastic production; Other (specify). Based on public comment, EPA has also refined the following list of uses of mercury in the manufacturing processes: Catalyst; Cathode; Reactant; Reagent; Other (specify).

Two commenters proposed revisions to specific information to be collected applicable to the intentional use of mercury in a manufacturing process (Ref. 15; Ref. 28). One commenter noted that in a mercury cell electrolyzer, the mercury serves solely as the cathode in the electrolysis process which breaks down the sodium chloride molecule and recommended that EPA should therefore add the term "cathode" to the Table 4 list as one of the selections (Ref. 15). Another commenter requested the removal of "[v]inyl chloride monomer production" as a specific manufacturing process because the vinyl chloride monomer (VCM) process is no longer used and is not expected to be used, by any manufacturer in the United States and that all VCM producers utilize ethylene, rather than acetylene, as the feedstock, which does not require any use of mercury (Ref. 28).

The Agency appreciates and agrees with these comments. EPA amended the regulatory text for reporting requirements for specific data to add the term "Cathode" as an option to identify how mercury is used in manufacturing processes and to remove the term "Vinyl chloride monomer production" from the options of categories of manufacturing processes for which mercury may be intentionally used.

c. Contextual Reporting Requirements. Within certain sectors of the mercury market, the Agency determined that additional data requirements are important to provide context to the quantitative data reported. To fully understand the supply, use, and trade of mercury in the United States, EPA is finalizing the following reporting requirements:

i. For imports of mercury or mercury-added products: Country of origin.

ii. For mercury or mercury-added products distributed in commerce: Identify the applicable purchasing or receiving industry sectors via NAICS codes.

iii. For exported mercury or mercury-added products: Destination country.

The Agency determined that the combination of general, specific, and contextual reporting requirements provides for the body of information required to fulfill statutory mandates of TSCA sections 8(b)(10)(B) and (C). As much as possible, the Agency designed all requirements to be answered only where a reporter engages in the specific activity from the inclusive list of options. In fact, EPA believes that it is unlikely that the typical reporter would be engaged in and, as a result, be required to respond to all, or even many, of the reporting requirements.

Aside from issue-specific discussions of reporting requirements presented elsewhere in Unit III.D., commenters generally supported the Agency's proposed general, specific, and contextual reporting requirements, emphasized the utility requiring reporting of NAICS to help track mercury supply and use flows, and noted the consistency and comprehensiveness of EPA mercury-added product categories and subcategories. The Agency appreciates this feedback from potentially affected persons.

5. Consideration of Small Entities. Based on EPA's economic analysis of this final rule (Ref. 6), approximately 40 percent of the respondents will be small entities. However, small businesses are not exempt from reporting requirements because, unlike the exemption for small manufacturers and processors provided under TSCA sections 8(a)(1)(A) and (B), reporting and recordkeeping requirements associated with TSCA section 8(b) are applicable to all affected entities. EPA requested public comment on what kinds of information would be particularly important to address for small entities (*e.g.*, outreach and webinars for small businesses to introduce the online reporting environment and application, explain requirements, and offer Q&A and other support) (Ref. 3).

The Agency received a comment related to the EPA's estimation of costs and burdens for the proposed rule (Ref. 27), which expressed concerns that initial estimates may be low given the scope of products, processes, and other information that EPA proposed to

require (Ref. 27). EPA prepared the economic analysis using the best available methods, consistent with EPA's Guidelines for Preparing Economic Analyses (see *https://www.epa.gov/environmental-economics/guidelines-preparing-economic-analyses*). While individual reporters may experience costs either higher or lower than those estimated in the analysis, the Agency believes that the average costs for the categories of reporters described are well represented.

The Agency also received a comment related to the potential burden to small businesses (Ref. 30), which expressed concerns about how the estimated initial and subsequent annual costs may impose a major burden for a small manufacturer, particularly when added to other regulatory costs. EPA intends to minimize the burden on all respondents, including small entities, as much as possible. The Agency will develop reporting instructions tailored to small entities who will be required to comply with the reporting requirements. EPA expects to conduct outreach and webinars for small businesses to introduce the reporting database, explain requirements, and offer Q&A and other support. Those materials will be available on the EPA website six months prior to the reporting deadline. Under TSCA section 26(d), EPA also provides specialized assistance to respondents, particularly to small entities, including technical and other non-financial assistance to manufacturers (including importers) and processors of chemical substances. EPA's TSCA Hotline assists small businesses complying with TSCA rules and provides various materials such as copies of **Federal Register** notices, advisories, and other information upon request. Contact information for the TSCA Hotline is listed under **FOR FURTHER INFORMATION CONTACT**.

E. Frequency of Inventory Publication

TSCA section 8(b)(10)(B) sets the date for publication of initial and subsequent, triennial iterations of the mercury inventory to commence on April 1, 2017. Therefore, EPA expects to publish the first mercury inventory supported by the finalized reporting requirements by April 1, 2020 and every three years thereafter.

F. Frequency of Data Collection and Reporting Deadline

TSCA section 8(b)(10)(D) provides the authority to promulgate this rule to assist in the preparation of the triennial inventory publication, but TSCA offers no guidance on the frequency of collection or reporting deadline. To minimize reporting obligations, the Agency compared the respective collection frequencies and reporting deadlines for IMERC, the CDR rule, and the TRI program to when EPA is required to publish the mercury inventory. TSCA section 8(b)(10)(B) sets a publication date for the mercury inventory that falls on the reporting deadline for IMERC: April 1 in a triennial cycle starting in April 2017. Data collected under the CDR rule is submitted to the Agency on a quadrennial cycle; the next reporting cycle will occur from 2016–2019, with a reporting deadline of September 2020. The TRI program collects and publishes data on an annual cycle with a reporting deadline of July 1 of each year.

Based on such considerations, the Agency determined that coinciding with the triennial IMERC frequency of collection is appropriate given the mercury inventory publication schedule is also triennial. The Agency is setting the mercury inventory reporting deadline to coincide with the TRI program deadline to align with a date with which certain, potential reporters might already be familiar. Therefore, EPA is establishing a July 1st reporting deadline for 2019 and every three years thereafter. Data submitted should cover only the calendar year preceding the year in which the reporting deadline occurs (*e.g.*, data for calendar year January 1 to December 31, 2018 are reported on or before July 1, 2019).

G. Recordkeeping

Consistent with the triennial reporting and publication cycle for the mercury inventory, EPA is requiring that each person who is subject to the reporting requirements must retain records that document any information reported to EPA. Records relevant to a reporting year must be retained for a period of 3 years beginning on the last day of the reporting year. Submitters are encouraged to retain their records longer than 3 years to ensure that past records are available as a reference when new submissions are being generated.

H. Reporting Requirements and Confidential Business Information

Reporters to the information collection of this rule may claim that their submitted information is CBI per statutory provisions for CBI under TSCA section 14.

The Agency received several comments concerning CBI, including suggestions to allow reporting in ranges and not demarcating specific amounts of mercury in exports going to specific countries (Ref. 27), as well as limiting reporting to a total amount of mercury used in a year (as opposed to specific amounts in import, export, manufacture, and other activities) (Ref. 15; Ref. 24; Ref. 28) to obviate the potential for persons to elect to claim data as CBI. Commenters were particularly concerned where reporting by a few or only a single facility engaged in a particular manufacturing process could allow competitors to calculate proprietary information. Other commenters requested an allowance for trade associations to collectively submit information on behalf of their members, which expressed a preference for collective reporting to protect against the release of proprietary sales data and other CBI (Ref. 9; Ref. 18).

EPA's mercury reporting application will allow multiple roles in creating, certifying, and submitting data. However, to maintain the alignment of general, specific, and contextual reporting requirements, EPA requires that separate reports be filed for each person/company (*i.e.*, not submitted in aggregate if an agent assists multiple persons/companies to develop its report). In addition, the reporting application is designed as a tool for data collection only and will accept CBI claims submitted in accordance with TSCA section 14. Unlike information provided to IMERC, CDR, and TRI, the data received in support of the mercury inventory will not be publicly accessible in an online database. EPA intends to use these data to fulfill the statutory requirements to publish an inventory (15 U.S.C. 2607(b)(10)(B)) and make required identifications and recommendations related to mercury use (15 U.S.C. 2607(b)(10)(C)). EPA does not foresee receiving and handling such information as CBI as a potential hindrance to Agency processes. As necessary, EPA will follow established publication policies to aggregate data for public release and will not compromise confidential business information.

I. Electronic Reporting

As set forth in the proposed rule, the Agency determined that mandatory electronic reporting would: (1) Streamline the reporting process and reduce the administrative costs associated with information submission and recordkeeping; (2) eliminate paper-based submissions as part of broader government efforts to move to modern, electronic methods of information gathering; (3) allow for more efficient data transmittal and a reduction in errors with the built-in validation procedures; and (4) reduce the reporting burden for submitters by reducing the cost and time required to review. EPA

is requiring electronic reporting of the mercury inventory data, using an Agency-provided, web-based reporting software to submit mercury inventory reports through the internet to EPA's Central Data Exchange (CDX). CDX provides the capability for submitters to access their data through the use of web services. For more information about CDX, go to *http://epa.gov/cdx.*

The Agency received comments related to the proposal to require electronic reporting, which suggested that EPA should be prepared to provide additional assistance to companies that may be challenged by an electronic reporting system (Ref. 11; Ref. 23). The Agency appreciates these comments and will develop reporting instructions and support materials to assist with reporting to the mercury inventory. Those materials will be available on the EPA website six months prior to the reporting deadline. In addition, the EPA CDX maintains a helpdesk contract to provide support for CDX users.

IV. References

The following is a listing of the documents that are specifically referenced in this document. The docket includes these documents and other information considered by EPA, including documents that are referenced within the documents that are included in the docket, even if the referenced document is not physically located in the docket. For assistance in locating these other documents, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

1. EPA. Mercury; Initial Inventory Report of Supply, Use, and Trade. (82 FR 15522; March 29, 2017).
2. UNEP. Minamata Convention on Mercury. (No date). Available at *http://www.mercuryconvention.org.* [Accessed August 4, 2017].
3. EPA. Mercury; Reporting Requirements for Toxic Substances Control Act Mercury Inventory—Proposed Rule. (82 FR 49564; October 26, 2017).
4. EPA. Reporting Requirements for the TSCA Mercury Inventory: Mercury—Proposed Rule; Extension of Comment Period. (82 FR 60168; December 17, 2017).
5. EPA. Mercury; Reporting Requirements for Toxic Substances Control Act Mercury Inventory—Response to Comments. June 20, 2018.
6. EPA. Economic Analysis for the Reporting Requirements for the TSCA Mercury Inventory. June 20, 2018.
7. EPA. Subpoena and Information Request. March 20, 2015. Available at *https://www.epa.gov/mercury/2015-subpoena-and-information-request-epa-mercuryrecyclers.*
8. Comment submitted by Kathleen M. Roberts, Executive Director, North American Metals Council.
9. Comment submitted by Lawrence E. Culleen, Arnold & Porter Kaye Scholer LLP for the Chemical Users Coalition.
10. Comment submitted by Peter Webster, General Counsel U.S., Barrick Gold North America, Inc.
11. Comment submitted by David Lennett, Senior Attorney, Natural Resources Defense Council.
12. Comment submitted by Carolyn Hanson, Acting Executive Director, Environmental Council of the States.
13. Comment submitted by Stephen Tarnowski, Office of Corporate Staff Counsel, Merck & Co, Inc.
14. Comment submitted by Ross Eisenberg, Vice President, Energy and Resources Policy, National Association of Manufacturers.
15. Comment submitted by Kenneth G. Akins, Director, Environmental, Westlake Chemical Corporation.
16. Comment submitted by Charles Franklin, Vice President and Counsel, Government Affairs, Portland Cement Association.
17. Comment submitted by Amandine Muskus, Manager, Environment & Energy Association of Global Automakers, Inc.; Stacy Tatman, Director of Environmental Affairs, Alliance of Automobile Manufacturers.
18. Comment submitted by Chris Cleet, QEP, Senior Director of Environment and Sustainability, Information Technology Industry Council; Katie Reilly, Senior Manager, Environmental and Sustainability Policy, Consumer Technology Association; Kyle Pistor, Vice President, Government Relations, National Electrical Manufacturers Association.
19. Anonymous public comment (EPA–HQ–OPPT–2017–0421–0062).
20. Comment submitted by Phillip K. Bell, President, Steel Manufacturers Association.
21. Comment submitted by David Hickey, Vice President, Advocacy, International Sign Association.
22. Comment submitted by Michele P. Wilson, Environmental Compliance, Savannah River Nuclear Solutions, LLC.
23. Comment submitted by Chuck Schwer, Vermont Department of Environmental, Conservation, Chairperson, and Tom Metzner, Connecticut Department of Energy and Environmental Protection, Chairperson, Interstate Mercury Education and Reduction Clearinghouse.
24. Comment submitted by Theodore B. Lynn, Ph.D., Director of Research, Dexsil Corporation.
25. NEWMOA. Mercury-Added Products Database. (No date). Available at *http://www.newmoa.org/prevention/mercury/imerc/notification/.* [Accessed August 4, 2017].
26. Comment submitted by David Isaacs, Semiconductor Industry Association.
27. Comment submitted by James C. Lee, Senior Compliance Analyst, Hach Company.
28. Comment submitted by Richard Krock, Vice President, Regulatory and Technical Affairs, Vinyl Institute.
29. U.S. Food and Drug Administration. Mercury Poisoning Linked to Skin Products. (July 26, 2016). Available at *https://www.fda.gov/forconsumers/consumerupdates/ucm294849.htm.* [Accessed October 3, 2017].
30. Anonymous public comment (EPA–HQ–OPPT–2017–0421–0038).
31. EPA. Collection of Information for Mercury Inventory Reporting Rule; EPA ICR No. 2567.02; OMB Control No.: 2070–0207. June 20, 2018.

V. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *http://www2.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011). Any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is subject to the requirements for regulatory actions specified in Executive Order 13771 (82 FR 9339, February 3, 2017). EPA prepared an analysis of the estimated costs and benefits associated with this action. This analysis, "Economic Analysis for the Reporting Requirements for the TSCA Mercury Inventory" (Economic Analysis, Ref. 6), is available in the docket and is summarized in Unit I.E.

C. Paperwork Reduction Act (PRA)

The information collection activities in this rule have been submitted for approval to OMB under the PRA, 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document that the EPA prepared has been assigned EPA ICR number 2567.02 and OMB Control No. 2070–0207 (Ref. 31). You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here.

The reporting requirements identified in the final rule would provide EPA with information necessary to prepare and periodically update an inventory of mercury supply, use, and trade in the United States, as required by TSCA section 8(b)(10)(D). These reporting requirements would help the Agency to prepare subsequent, triennial

publications of the inventory, as well as to carry out the requirement of TSCA section 8(b)(10)(C) to identify any manufacturing processes or products that intentionally add mercury and recommend actions, including proposed revisions of Federal law or regulations, to achieve further reductions in mercury use. EPA intends to use information collected under the rule to assist in efforts to reduce the use of mercury in products and processes and to facilitate reporting on implementation of the Minamata Convention by the United States. Respondents may claim some of the information reported to EPA under the final rule as CBI under TSCA section 14. TSCA section 14(c) requires a supporting statement and certification for confidentiality claims asserted after June 22, 2016.

EPA estimated total burden and costs to industry associated with the information collection activities in the final rule over the first three years after its promulgation (Ref. 6). For the 750 companies anticipated to be subject to the reporting requirements, the average per respondent burden hours for Year 1 (of a triennial cycle for submitting information) was estimated to be 96.76 hours (Ref. 6). Years 2 and 3 are not data collection years, so there is no cost associated with the rule during these years (Ref. 6). Therefore, the average for total burden hours per the three-year reporting cycle is 32.25 hours per year (Ref. 6).

Respondents/affected entities: Manufacturers, importers, and processors of mercury.

Respondent's obligation to respond: Mandatory (15 U.S.C. 2607(b)(10)(D)).

Estimated number of respondents: 750.

Frequency of response: Triennially.

Total estimated annual burden: 24,189 hours (averaged over 3 years). Burden is defined at 5 CFR 1320.3(b).

Total estimated annual cost: $1,942,190 (averaged over 3 years), includes $0 annualized capital or operation and maintenance costs.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9. Submit your comments on the Agency's need for this information, the accuracy of the provided burden estimates and any suggested methods for minimizing respondent burden to the EPA using the docket identified at the beginning of this rule. You may also send your ICR-related comments to OMB's Office of Information and Regulatory Affairs via email to *oira_submissions@omb.eop.gov,* Attention: Desk Officer for the EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after receipt, OMB must receive comments no later than July 27, 2018.

D. Regulatory Flexibility Act (RFA)

Pursuant to section 605(b) of the RFA, 5 U.S.C. 601 *et seq.,* I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. The small entities subject to the requirements of this action include those that manufacture, including import, mercury or mercury-added products (manufacturers), or otherwise intentionally use mercury in a manufacturing process (processors). To identify the number of firms that are subject to the rule and considered small under SBA size standards, EPA compared the appropriate SBA size definition to the company's revenue or number of employees, as identified using Dun and Bradstreet or other market research websites. Of the 506 parent companies that are subject to the rule, 211 companies (42 percent) meet the SBA small business definitions for their respective NAICS classifications.

The small entity analysis estimated that no parent company would incur an impact of 3 percent or greater, and 4 parent companies (1.85 percent of total entities) would incur an impact of 1 to 3 percent. Details of this analysis are included in the accompanying Economic Analysis for this rule (Ref. 6).

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531 through 1538, and does not significantly or uniquely affect small governments. As such, the requirements of sections 202, 203, 204, or 205 of UMRA do not apply to this action.

F. Executive Order 13132: Federalism

This action does not have federalism implications, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). It will not have any effect on tribal governments, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in the Order. Thus, E.O. 13175 does not apply to this action.

H. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definition of "covered regulatory action" in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk, nor is this action economically significant as the impact of this action will be less than $100 million.

I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This final rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not expected to affect energy supply, distribution, or use.

J. National Technology Transfer and Advancement Act (NTTAA)

Since this action does not involve any technical standards, section 12(d) of NTTAA, 15 U.S.C. 272 note, does not apply to this section.

K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

This action is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994) because it does not establish an environmental health or safety standard. This action establishes an information requirement and does not affect the level of protection provided to human health or the environment.

VI. Congressional Review Act (CRA)

This action is subject to the CRA, 5 U.S.C. 801 *et seq.,* and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 713

Environmental protection, Exports, Imports, Manufacturing, Mercury, Trade practices.

Dated: June 21, 2018.

E. Scott Pruitt,

Administrator.

Therefore, 40 CFR chapter I, subchapter R, is amended by adding a new part 713 to read as follows:

PART 713—REPORTING REQUIREMENTS FOR THE TSCA INVENTORY OF MERCURY SUPPLY, USE, AND TRADE

Sec.

Authority: 15 U.S.C. 2607(b)(10)(D).

§713.1 Purpose, scope, and compliance.

(a) This part specifies reporting and recordkeeping procedures under section 8(b)(10) of the Toxic Substances Control Act (TSCA) (15 U.S.C. 2607(b)(10)) for certain manufacturers (including importers) and processers of mercury as defined in section 8(b)(10)(A) to include elemental mercury and mercury compounds. Hereinafter ''mercury'' will refer to both elemental mercury and mercury compounds collectively, except where separately identified. Section 8(b)(10)(D) of TSCA authorizes the EPA Administrator to require reporting from any person who manufactures mercury or mercury-added products or otherwise intentionally uses mercury in a manufacturing process to carry out and publish in the **Federal Register** an inventory of mercury supply, use, and trade in the United States. In administering this mercury inventory, EPA is directed to identify any manufacturing processes or products that intentionally add mercury and to recommend actions, including proposed revisions of Federal law or regulations, to achieve further reductions in mercury use. EPA intends to use the collected information to implement TSCA and shape the Agency's efforts to recommend actions, both voluntary and regulatory, to reduce the use of mercury in commerce. In so doing, the Agency will conduct timely evaluation and refinement of these reporting requirements so that they are efficient and non-duplicative for reporters.

(b) This part applies to the activities associated with the periodic publication of information on mercury supply, use, and trade in the United States. Except as described at § 713.7, the reporting requirements for mercury supply, use, and trade apply to the following activities:

(1) Activities undertaken with the purpose of obtaining an immediate or eventual commercial advantage:

(i) Import of mercury;

(ii) Manufacture (other than import) of mercury;

(iii) Import of a mercury-added product;

(iv) Manufacture (other than import) of a mercury-added product; and

(v) Intentional use of mercury in a manufacturing process.

(2) Activities undertaken in relationship to those activities described in paragraph (b)(1) of this section:

(i) Distribution in commerce, including domestic sale or transfer, of mercury;

(ii) Distribution in commerce, including domestic sale or transfer, of a mercury-added product;

(iii) Storage of mercury (including import);

(iv) Export of a mercury compound (unless specifically prohibited); and

(v) Export of a mercury-added product.

(c) Section 15(3) of TSCA makes it unlawful for any person to fail or refuse to submit information required under this part. In addition, TSCA section 15(3) makes it unlawful for any person to fail to: Establish or maintain records, or permit access to records required by this part. Section 16 of TSCA provides that any person who violates a provision of TSCA section 15 is liable to the United States for a civil penalty and may be criminally prosecuted. Pursuant to TSCA section 17, the Federal Government may seek judicial relief to compel submission of TSCA section 8 information and to otherwise restrain any violation of TSCA section 15.

(d) Each person who reports under this part must certify the accuracy and maintain records of the information reported under this part and, in accordance with TSCA, permit access to, and the copying of, such records by EPA officials.

§713.5 Mercury for which information must be reported.

(a) Elemental mercury (Chemical Abstracts Service Registry Number 7439–97–6); or

(b) A mercury compound, including but not limited to the mercury compounds listed in Table 1 of this part by Chemical Abstracts Service Registry Number:

TABLE 1—MERCURY COMPOUNDS

Chemical Abstracts Service Registry No.	Mercury compound
10045–94–0	Nitric acid, mercury(2+) salt (2:1).
100–57–2	Mercury, hydroxyphenyl-.
10112–91–1	Mercury chloride (Hg2Cl2).
10124–48–8	Mercury amide chloride (Hg(NH2)Cl).
103–27–5	Mercury, phenyl(propanoato-.kappa.O)-.
10415–75–5	Nitric acid, mercury(1+) salt (1:1).
104–60–9	Mercury, (9-octadecenoato-.kappa.O)phenyl-.
1191–80–6	9-Octadecenoic acid (9Z)-, mercury(2+) salt (2:1).
12068–90–5	Mercury telluride (HgTe).
13170–76–8	Hexanoic acid, 2-ethyl-, mercury(2+) salt (2:1).
13302–00–6	Mercury, (2-ethylhexanoato-.kappa.O)phenyl-.
1335–31–5	Mercury cyanide oxide (Hg2(CN)2O).
1344–48–5	Mercury sulfide (HgS).
1345–09–1	Cadmium mercury sulfide.
13876–85–2	Mercurate(2-), tetraiodo-, copper(1+) (1:2), (T-4)-.
138–85–2	Mercurate(1-), (4-carboxylatophenyl)hydroxy-, sodium (1:1).
141–51–5	Mercury, iodo(iodomethyl)-.

TABLE 1—MERCURY COMPOUNDS—Continued

Chemical Abstracts Service Registry No.	Mercury compound
14783–59–6	Mercury, bis[(2-phenyldiazenecarbothioic acid-.kappa.S) 2-phenylhydrazidato-.kappa.N2]-, (T-4)-.
15385–58–7	Mercury, dibromodi-, (Hg-Hg).
15785–93–0	Mercury, chloro[4-[(2,4-dinitrophenyl)amino]phenyl]-.
15829–53–5	Mercury oxide (Hg2O).
1600–27–7	Acetic acid, mercury(2+) salt (2:1).
1785–43–9	Mercury, chloro(ethanethiolato)-.
19447–62–2	Mercury, (acetato-.kappa.O)[4-[2-[4-(dimethylamino)phenyl]diazenyl]phenyl]-.
20582–71–2	Mercurate(2-), tetrachloro-, potassium (1:2), (T-4)-.
20601–83–6	Mercury selenide (HgSe).
21908–53–2	Mercury oxide (HgO).
22450–90–4	Mercury(1+), amminephenyl-, acetate (1:1).
24579–90–6	Mercury, chloro(2-hydroxy-5-nitrophenyl)-.
24806–32–4	Mercury, [.mu.-[2-dodecylbutanedioato(2-).kappa.O1:.kappa.O4]]diphenyldi-.
26545–49–3	Mercury, (neodecanoato-.kappa.O)phenyl-.
27685–51–4	Cobaltate(2-), tetrakis(thiocyanato-.kappa.N)-, mercury(2+) (1:1), (T-4)-.
29870–72–2	Cadmium mercury telluride ((Cd,Hg)Te).
3294–57–3	Mercury, phenyl(trichloromethyl)-.
33770–60–4	Mercury, [3,6-dichloro-4,5-di(hydroxy-.kappa.O)-3,5cyclohexadiene-1,2-dionato(2-)]-.
3570–80–7	Mercury, bis(acetato-.kappa.O)[.mu.-(3',6'-dihydroxy-3oxospiro[isobenzofuran-1(3H),9'-[9H]xanthene]-2',7'diyl)]di-.
537–64–4	Mercury, bis(4-methylphenyl)-.
539–43–5	Mercury, chloro(4-methylphenyl)-.
54–64–8	Mercurate(1-), ethyl[2-(mercapto-.kappa.S)benzoato(2-).kappa.O]-, sodium (1:1).
55–68–5	Mercury, (nitrato-.kappa.O)phenyl-.
56724–82–4	Mercury, phenyl[(2-phenyldiazenecarbothioic acid.kappa.S) 2-phenylhydrazidato-.kappa.N2]-.
587–85–9	Mercury, diphenyl-.
592–04–1	Mercury cyanide (Hg(CN)2).
592–85–8	Thiocyanic acid, mercury(2+) salt (2:1).
593–74–8	Mercury, dimethyl-.
59–85–8	Mercurate(1-), (4-carboxylatophenyl)chloro-, hydrogen.
623–07–4	Mercury, chloro(4-hydroxyphenyl)-.
62–38–4	Mercury, (acetato-.kappa.O)phenyl-.
62638–02–2	Cyclohexanebutanoic acid, mercury(2+) salt (2:1).
627–44–1	Mercury, diethyl-.
6283–24–5	Mercury, (acetato-.kappa.O)(4-aminophenyl)-.
628–86–4	Mercury, bis(fulminato-.kappa.C)-.
629–35–6	Mercury, dibutyl-.
63325–16–6	Mercurate(2-), tetraiodo-, (T-4)-, hydrogen, compd. with 5-iodo-2-pyridinamine (1:2:2).
63468–53–1	Mercury, (acetato-.kappa.O)(2-hydroxy-5-nitrophenyl)-.
63549–47–3	Mercury, bis(acetato-.kappa.O)(benzenamine)-.
68201–97–8	Mercury, (acetato-.kappa.O)diamminephenyl-, (T-4)-.
72379–35–2	Mercurate(1-), triiodo-, hydrogen, compd. with 3-methyl2(3H)-benzothiazolimine (1:1:1).
7439–97–6	Mercury.
7487–94–7	Mercury chloride (HgCl2).
7546–30–7	Mercury chloride (HgCl).
7616–83–3	Perchloric acid, mercury(2+) salt (2:1).
7774–29–0	Mercury iodide (HgI2).
7783–33–7	Mercurate(2-), tetraiodo-, potassium (1:2), (T-4)-.
7783–35–9	Sulfuric acid, mercury(2+) salt (1:1).
7783–39–3	Mercury fluoride (HgF2).
7789–47–1	Mercury bromide (HgBr2).
90–03–9	Mercury, chloro(2-hydroxyphenyl)-.
94070–93–6	Mercury, [.mu.-[(oxydi-2,1-ethanediyl 1,2benzenedicarboxylato-.kappa.O2)(2-)]]diphenyldi-.

§ 713.7 Persons who must report.

(a) Any person who manufactures (including imports) mercury, except:

(1) A person who does not manufacture (including import) mercury with the purpose of obtaining an immediate or eventual commercial advantage;

(2) A person who manufactures (including imports) mercury only as an impurity; or

(3) A person engaged only in the generation, handling, or management of mercury-containing waste, including recovered mercury that is discarded or elemental mercury that is managed for long-term storage and management under section 6939f(g)(2) of the Resource Conservation and Recovery Act;

(b) Any person who manufactures (including imports) a mercury-added product, except:

(1) A person who does not manufacture (including import) a mercury-added product with the purpose of obtaining an immediate or eventual commercial advantage;

(2) A person engaged only in the import of a product that contains a component that is a mercury-added product; or

(3) A person engaged only in the manufacture (other than import) of a product that contains a component that is a mercury-added product who did not first manufacture (including import) the component that is a mercury-added product; and

(c) Any person who otherwise intentionally uses mercury in a manufacturing process, except a person

who does not intentionally use mercury in a manufacturing process with the purpose of obtaining an immediate or eventual commercial advantage.

§ 713.9 General requirements for which information must be reported.

Except as described at § 713.7:

(a) Persons who manufacture (including import) mercury in amounts greater than or equal to 2,500 pounds (lbs.) for elemental mercury or greater than or equal to 25,000 lbs. for mercury compounds for a specific reporting year must report, as applicable:

(1) Amount of mercury stored (lbs.); and

(2) Amount of mercury distributed in commerce (lbs.).

(b) All other persons who manufacture (including import) mercury must report, as applicable:

(1) Amount of mercury manufactured (other than imported) (lbs.);

(2) Amount of mercury imported (lbs.);

(3) Amount of mercury exported (lbs.), except mercury prohibited from export at 15 U.S.C. 2611(c)(1) and (7);

(4) Amount of mercury stored (lbs.); and

(5) Amount of mercury distributed in commerce (lbs.).

(c) Persons who report sales of mercury-added products to the Interstate Mercury Education and Reduction Clearinghouse (IMERC) must report, as applicable:

(1) Amount of mercury in manufactured (other than imported) products (lbs.);

(2) Amount of mercury in imported products (lbs.); and

(3) Amount of mercury in exported products (lbs.).

(d) All other persons who manufacture (including import) mercury-added products must report, as applicable:

(1) Amount of mercury in manufactured (other than imported) products (lbs.);

(2) Amount of mercury in imported products (lbs.);

(3) Amount of mercury in exported products (lbs.); and

(4) Amount of mercury in products distributed in commerce (lbs.).

(e) Persons who otherwise intentionally use mercury in a manufacturing process must report, as applicable:

(1) Amount of mercury otherwise intentionally used (lbs.) in a manufacturing process; and

(2) Amount of mercury stored (lbs.).

§ 713.11 Specific requirements for which information must be reported.

Except as described at § 713.7:

(a) Any person who manufactures (including imports) mercury must specify, as applicable, the specific mercury compound(s) from a pre-selected list (as listed in Table 1 of this part).

(b) Any person who manufactures (including imports) a mercury-added product must specify as applicable, the specific category(ies) and subcategory(ies) from a pre-selected list, as listed in Table 2 of this part:

TABLE 2—CATEGORIES AND SUBCATEGORIES OF MERCURY-ADDED PRODUCTS

Category	Subcategory
Batteries	—Button cell, silver.
	—Button cell, zinc-air.
	—Button cell, alkaline.
	—Stacked button cell batteries.
	—Manganese oxide.
	—Silver oxide.
	—Mercuric oxide, non-button cell.
	—Button cell, mercuric oxide.
	—Button cell, zinc carbon.
	—Other (specify).
Dental amalgam	[No subcategories].
Formulated products (includes uses in cosmetics, pesticides, and laboratory chemicals).	—Skin-lightening creams.
	—Lotions.
	—Soaps and sanitizers.
	—Bath oils and salts.
	—Topical antiseptics.
	—Preservatives (*e.g.,* for use in vaccines and eye-area cosmetics when no preservative alternatives are available).
	—Pharmaceuticals (including prescription and over-the-counter drug products).
	—Cleaning products (not registered as pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act).
	—Pesticides.
	—Paints.
	—Dyes.
	—Reagents (*e.g.,* catalysts, buffers, fixatives).
	—Other (specify).
Lighting, lamps, bulbs	—Linear fluorescent.
	—Compact fluorescent.
	—U-tube and circular fluorescent.
	—Cold cathode fluorescent.
	—External electrode fluorescent.
	—Mercury vapor.
	—Metal halide.
	—High pressure sodium.
	—Mercury short arc.
	—Neon.
	—Other (specify).

TABLE 2—CATEGORIES AND SUBCATEGORIES OF MERCURY-ADDED PRODUCTS—Continued

Category	Subcategory
Measuring instruments	—Barometer. —Fever thermometer. —Flow meter. —Hydrometer. —Hygrometer/psychrometer. —Manometer. —Non-fever thermometer. —Pyrometer. —Sphygmomanometer. —Other (specify).
Pump seals	[No subcategories].
Switches, relays, sensors, valves	—Tilt switch. —Vibration switch. —Float switch. —Pressure switch. —Temperature switch. —Displacement relay. —Wetted reed relay. —Contact relay. —Flame sensor. —Thermostat. —Other (specify).
Miscellaneous/novelty mercury-added products	—Wheel weights. —Wheel rotation balancers/stabilizers. —Firearm recoil suppressors. —Carburetor synchronizers. —Joint support/shock absorption bands. —Other (specify).

(c) Any person who otherwise intentionally uses mercury in a manufacturing process, other than the manufacture of a mercury compound or a mercury-added product, must identify, as applicable:

(1) The specific manufacturing process for which mercury is otherwise intentionally used from a pre-selected list, as listed in Table 3 of this part:

TABLE 3—MANUFACTURING PROCESS FOR WHICH MERCURY IS OTHERWISE INTENTIONALLY USED

Chlorine production (*e.g.*, mercury-cell chlor-alkali process).
Acetaldehyde production.
Sodium/potassium methylate/ethylate production.
Polyurethane/plastic production.
Other (specify).

(2) The specific use of mercury in a manufacturing process from a pre-selected list, as listed in Table 4 of this part:

TABLE 4—SPECIFIC USE OF MERCURY IN A MANUFACTURING PROCESS

Catalyst.
Cathode.
Reactant.
Reagent.
Other (specify).

§ 713.13 Contextual requirements for which information must be reported.

Except as described at § 713.7:

(a) Persons who manufacture (including import) mercury in amounts greater than or equal to 2,500 lbs. for elemental mercury or greater than or equal to 25,000 lbs. for mercury compounds for a specific reporting year must report, as applicable:

(1) Country(ies) of origin for imported mercury;

(2) Country(ies) of destination for exported mercury; and

(3) NAICS code(s) for mercury distributed in commerce.

(b) All other persons who manufacture (including import) mercury must report, as applicable:

(1) Country(ies) of origin for imported mercury;

(2) Country(ies) of destination for exported mercury; and

(3) NAICS code(s) for mercury distributed in commerce.

(c) Persons who report sales of mercury-added products to IMERC must report, as applicable:

(1) Country(ies) of origin for imported products;

(2) Country(ies) of destination for exported products; and

(3) NAICS code(s) for products distributed in commerce.

(d) All other persons who manufacture (including import) mercury-added products must report, as applicable:

(1) Country(ies) of origin for imported products;

(2) Country(ies) of destination for exported products; and

(3) NAICS code(s) for products distributed in commerce.

(e) Persons who otherwise intentionally use mercury in a manufacturing process, other than the manufacture of a mercury compound or a mercury-added product, must report, as applicable:

(1) Country(ies) of destination for exported final product(s); and

(2) NAICS code(s) for mercury in final product(s) distributed in commerce.

§ 713.15 Reporting information to EPA.

Any person who must report under this part must report for the submission period described at § 713.17:

(a) Quantities of mercury in pounds per applicable activity listed under the general requirements for which information must be reported described at § 713.9;

(b) Specific requirements for which information must be reported described at § 713.11;

(c) Contextual requirements for which information must be reported described at § 713.13; and

(d) According to the procedures described at § 713.21.

§ 713.17 When to report.

(a) Any person who must report under this part must report for the reporting

year described as follows. A reporting year is the year during which mercury activity, required to be reported by this rule, has occurred. The 2018 reporting year is from January 1, 2018 to December 31, 2018. Subsequent reporting years are from January 1 to December 31 at 3-year intervals, beginning in 2021.

(b) All information reported for an applicable reporting year must be submitted on or before the first day of July following the reporting year. The submission deadline for the 2018 reporting year is July 1, 2019. Subsequent submission deadlines are on or before the first day of July following the reporting year, in 3-year intervals, beginning in 2022.

(c) The data from the 2018 reporting year will be used for the 2020 mercury inventory, the data from the 2021 reporting year will be used for the 2023 mercury inventory, and so forth at three-year intervals.

§ 713.19 Recordkeeping requirements.

Each person who is subject to the reporting requirements of this part must retain records that document any information reported to EPA. Records relevant to a reporting year must be retained for a period of 3 years beginning on the last day of the reporting year. Submitters are encouraged to retain their records longer than 3 years to ensure that past records are available as a reference when new submissions are being generated.

§ 713.21 Electronic filing.

(a) You must use the Mercury Electronic Reporting (MER) application to complete and submit required information as set forth in § 713.17. Submissions may only be made as set forth in this section.

(b) Submissions must be sent electronically to EPA via CDX.

(c) Access MER and instructions, as follows:

(1) By website. Access MER via the CDX homepage at *https://cdx.epa.gov/* and follow the appropriate links.

(2) By phone or email. Contact the EPA TSCA Hotline at (202) 554–1404 or *TSCA-Hotline@epa.gov*.

[FR Doc. 2018–13834 Filed 6–26–18; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 300–3 and 301–11, Appendices B and D to Chapter 301, and Parts 302–9 and 302–11

[FTR Amendment 2018–01; FTR Case 2018–301; Docket No. 2018–0007, Sequence 1]

RIN 3090–AJ99

Federal Travel Regulation (FTR); Removal of the Meals and Incidental Expenses (M&IE) Deduction Table, Allocation of M&IE Rates To Be Used in Making Deductions From the M&IE Allowance, and the Glossary of Acronyms

AGENCY: Office of Government-wide Policy, U.S. General Services Administration (GSA).

ACTION: Direct final rule.

SUMMARY: GSA is amending the Federal Travel Regulation (FTR), to remove the meals and incidental expenses (M&IE) deduction table, Allocation of M&IE Rates To Be Used in Making Deductions From the M&IE Allowance, and the Glossary of Acronyms.

DATES: This rule is effective August 13, 2018 without further action, unless adverse comments are received by July 27, 2018. GSA will consider whether these comments are significant enough to publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect.

ADDRESSES: Submit comments in response to FTR Case 2018–301 by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by entering "FTR Case 2018–301", under the heading "Enter Keyword or ID" and select "Search". Select the link "Submit a Comment" that corresponds with "FTR Case 2018–301" and follow the instructions provided at the "Comment Now" screen. Please include your name, company name (if any), and "FTR Case 2018–301" on your attached document.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), ATTN: Ms. Lois Mandell, 1800 F Street NW, Washington, DC 20405.

Instructions: Please submit comments only and cite FTR Case 2018–301 in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Jill Denning, Program Analyst, Office of Government-wide Policy, at 202–208–7642 or *jill.denning@gsa.gov*. Contact the Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405, 202–501–4755, for information pertaining to status or publication schedules. Please cite FTR case 2018–301.

SUPPLEMENTARY INFORMATION:

A. Public Participation

GSA is publishing this direct final rule without a prior proposed rule as this is a noncontroversial action, and GSA anticipates no significant adverse comments. A significant adverse comment is defined as one where the comment explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. In determining whether a significant adverse comment is sufficient to terminate a direct final rulemaking, GSA will consider whether the comment raises an issue serious enough to warrant a substantive response in a notice-and-comment process. GSA notes that comments that are frivolous, insubstantial, or outside the scope of the rule would not be considered adverse under this procedure. A comment recommending a rule change in addition to the rule would not be considered a significant adverse comment, unless the comment states why the rule would be ineffective without the additional change. In addition, if a significant adverse comment applies to part of a rule and that part can be severed from the remainder of the rule (*e.g.,* where a rule deletes several unrelated regulations), GSA may adopt as final those parts of the rule that are not the subject of a significant adverse comment. For further information about commenting on this rule, please see the **ADDRESSES** section of this document.

B. Background

As part of a comprehensive review of the FTR, GSA is removing the M&IE deduction table from appendix B to chapter 301, Allocation of M&IE Rates To Be Used in Making Deductions From the M&IE Allowance; and all of appendix D to chapter 301, Glossary of Acronyms. The table in appendix B is publicly available on the internet at *https://www.gsa.gov/mie* thus its

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

NATURAL RESOURCES DEFENSE COUNCIL, INC., and STATE OF VERMONT, *Petitioners,* v. U.S. ENVIRONMENTAL PROTECTION AGENCY and ANDREW R. WHEELER, in his capacity as Acting Administrator of the U.S. Environmental Protection Agency, *Respondents.*	Docket No. 18-2121 Consolidated with Docket No. 18-2670

DECLARATION OF DAVID LENNETT

I, David Lennett, declare as follows:

1. I make this declaration of my own personal knowledge, unless otherwise indicated, and could and would testify as set forth herein if called to do so.

2. I am a senior attorney with the Natural Resources Defense Council (NRDC), presently practicing within NRDC's Healthy People & Thriving Communities Program. I have worked full-time at NRDC for more than eight years, and as a consultant before that. My present

work in large part focuses on advocacy to protect public health and the environment from mercury pollution.

NRDC's advocacy activities to reduce mercury contamination

3. NRDC is a non-profit advocacy organization committed to the protection of human health and the environment. NRDC is exempt from taxation under section 501(c)(3) of the Internal Revenue Code. NRDC employs hundreds of scientists, lawyers, and other professionals in support of its mission, and maintains offices in Bozeman, MT; Chicago, IL; New York, NY; Washington, DC; San Francisco and Santa Monica, CA; and Beijing, China. NRDC's headquarters are in New York, NY.

4. NRDC's mission is to safeguard the Earth: its people, its plants and animals, and the natural systems on which all life depends. NRDC's institutional priorities include protecting families and communities from toxic chemicals that can harm human health. NRDC engages in research, advocacy, education, and litigation to reduce and eliminate toxic chemicals from our air, water, food, and consumer products.

5. To further this mission, NRDC works to reduce mercury pollution both domestically and internationally, as well as to inform and educate the public about mercury uses and risks from mercury exposure.

6. Domestically, NRDC has advocated for substantial mercury-emission reductions through participating in federal rulemaking proceedings; filing petitions with federal agencies; advocating for passage of new state and federal laws and regulations; and engaging in litigation, among other activities. For example:

- In November 2018, NRDC filed comments urging EPA to designate mercury as a "high priority" chemical requiring a risk evaluation under the Toxic Substances Control Act (TSCA).[1]

- In 2017, NRDC successfully sued EPA to compel it to reinstate a rule that requires dental offices to remove the mercury they use instead of disposing of it in their wastewater.[2]

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[1] NRDC, Comments submitted to EPA Docket No. EPA-HQ-OPPT-2018-0592 (Nov. 14, 2018), https://www.regulations.gov/document?D=EPA-HQ-OPPT-2018-0592-0002.

[2] *See* Compl., *Nat. Res. Def. Council v. U.S. EPA*, No. 17-cv-751 (S.D.N.Y. filed Feb. 1, 2017), ECF No. 1; Press Release, NRDC, NRDC Lawsuit Prompts EPA to Restore Mercury Protection Rule It Illegally Withdrew (June 9, 2017), https://www.nrdc.org/media/2017/170609-1.

- In 2015, NRDC and the majority of state members of the Northeast Waste Management Officials' Association petitioned EPA to promulgate a reporting rule under TSCA to collect needed data about mercury uses in products and industrial processes.[3]

- NRDC played a lead role in advocating for the passage of the Mercury Export Ban Act of 2008, Pub. Law No. 110-414, 122 Stat. 4341.

- NRDC played a lead role in advocating for the passage of the 2016 mercury-related TSCA amendments, 15 U.S.C. § 2607(b)(10).

- NRDC conducted air sampling that led to the publication of a report highlighting the dangerous mercury air pollution produced at chlorine-manufacturing plants. The report included recommendations for federal action to reduce these mercury emissions.[4]

- NRDC has been engaged in a years-long legal battle to clean up extensive mercury contamination in the Penobscot River in Maine that has led to closures of lobster and crab fisheries.[5]

7. In addition, at the state level, NRDC works with a network of non-governmental organizations (NGOs) to develop state programs

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[3] *See* Mercury; TSCA Section 21 Petition; Reasons for Agency Response 80 Fed. Reg. 60,584 (Oct. 7, 2015).

[4] *See* NRDC, Lost and Found: Missing Mercury from Chemical Plants Pollutes Air and Water (2006), https://www.nrdc.org/sites/default/files/chlor.pdf. I was not personally involved in the preparation of this report.

[5] *See Me. People's All. v. Mallinckrodt, Inc.*, 471 F.3d 277 (1st Cir. 2006).

restricting mercury use in products and to improve the safe collection and management of mercury-added products at the end of their useful life. For example, NRDC has worked to improve state mercury thermostat collection programs in California and Illinois, including providing technical and policy advice over the last five years to state officials on collection goals and how to achieve them. In addition, since 2005, NRDC has provided support to state NGOs promoting mercury product phase-out initiatives. This state work has contributed to significant reductions in mercury use in product manufacturing domestically to date.

8. Internationally, NRDC actively participated for years in negotiations culminating in the creation of the Minamata Convention on Mercury (the Convention), an international agreement whose objective is to protect human health and the environment from anthropogenic emissions and releases of mercury and mercury compounds.[6] NRDC obtained accreditation and participated as a formal

[6] Minamata Convention on Mercury, Oct. 10, 2013, http://www.mercuryconvention.org/Portals/11/documents/Booklets/COP1%20version/Minamata-Convention-booklet-eng-full.pdf.

observer at every Intergovernmental Negotiating Committee and Conference of the Parties meeting.

9. Following the Convention's finalization, I have done and continue to do extensive work to promote the Convention's implementation. The purpose of this advocacy is to ensure that the Convention effectively achieves its goal of reducing mercury contamination, including in the United States. This effort is part of NRDC's strategy to reduce risks that communities face from exposure to mercury, in particular through fish consumption.

10. As part of this implementation work, I advise governments about laws and policies necessary for meeting Convention obligations. I co-authored the Minamata Convention on Mercury Ratification and Implementation Manual, which provides guidance to government officials about how to meet their obligations under the Convention.[7] I also prepared a checklist of legal authorities needed to comply with the Convention, and training materials to advise governmental officials

[7] *See* David Lennett & Richard Gutierrez, Minamata Convention on Mercury Ratification and Implementation Manual (2014, last updated Jan. 2018), https://www.nrdc.org/sites/default/files/minamata-convention-on-mercury-manual.pdf.

on the meaning and significance of the various Convention obligations related to reducing mercury supply, uses, and emissions/releases. I have also participated as an expert on the open-ended expert group formed to make recommendations on thresholds for mercury waste coverage under the Convention.[8]

11. In addition, NRDC participates in a global non-governmental organization network called the Zero Mercury Working Group.[9] This Working Group sponsors mercury awareness-raising and reduction activities in many countries and promotes early ratification and implementation of the Convention. NRDC also co-chairs the Global Mercury Partnership on Artisanal and Small-Scale Gold Mining (ASGM), an initiative of the United Nations Environment Programme.

12. Reliable, accurate, and complete information about U.S. mercury use, supply, and trade is critical to NRDC's work to reduce mercury pollution and to educate the public about mercury

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[8] *See* United Nations Environment Programme, Conf. of the Parties to the Minamata Convention on Mercury, Second Meeting, Report on the outcome of the open-ended process on waste thresholds called for under article 11 (Aug. 31, 2018), http://www.mercuryconvention.org/Portals/11/documents/meetings/COP2/English/2_6_e_waste.pdf.

[9] *See* Zero Mercury Working Group, http://www.zeromercury.org/.

contamination and associated risks to public health. Information about how much mercury exists in the U.S. economy, and for what products and processes, informs and facilitates NRDC's activities in furtherance of its mission.

13. For example, since 2005, NRDC has relied on the existing but imperfect database on mercury products maintained by the Interstate Mercury Education and Reduction Clearinghouse (IMERC) to identify priorities for NRDC's advocacy activities to phase out mercury in product manufacturing. NRDC relied on the IMERC data to promote state action on certain product categories.

14. Another example is NRDC's work to reduce mercury use in chlorine-manufacturing plants. Because information about mercury use in the chlor-alkali process is relatively comprehensive, NRDC has been effective at advocating for its reduction in that process. To the best of my knowledge, almost all of the chlorine plants that used mercury in the United States have closed or converted to a non-mercury technology.[10] But for other industrial processes that rely on mercury,

[10] *See* United States, Registration for an Exemption Pursuant to Article 6, Paragraph 1, of the Minamata Convention on Mercury,

data is virtually nonexistent. Without that information, NRDC cannot educate the public or rationally prioritize and organize its own advocacy. NRDC cannot determine which industrial processes that use mercury to focus its work on if it does not know how much mercury is used in those processes. Only with a complete understanding of the processes and products in which mercury is used can NRDC educate the public about their risks.

15. As another example, NRDC used then-available mercury supply data in its advocacy urging the passage of the Mercury Export Ban Act. The Export Ban aims to prevent excess U.S. supply of mercury—produced through gold mining and recycling—from being exported to other markets. NRDC used available data on mercury supply and use to answer questions of members of Congress about how the bill would work and its effects. NRDC also used such data to inform its participation in an EPA expert committee concerning the bill. However, the available data at that time provided an incomplete picture of mercury flows in the U.S. economy; improved data would have

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http://www.mercuryconvention.org/Portals/11/documents/Notifications/USA%20declaration_Art%206%20para%201.pdf.

improved NRDC's ability to effectively advocate for the strongest version of the Export Ban.

16. Similarly, NRDC used the data from EPA's Report to Congress on mercury compounds to advocate for a ban on the export of five specific compounds in the 2016 mercury-related TSCA amendments.[11] NRDC could only target those five compounds due to the extremely limited data on other compounds.

17. Further, as explained below in Paragraphs 25-28, NRDC's activities to promote robust implementation of the Minamata Convention rely on complete and accurate data about U.S. mercury supply, use, and trade.

EPA's Mercury Reporting Rule

18. As described above, reliable, accurate, and complete information about the flow of mercury in the U.S. economy is critical to NRDC's advocacy. TSCA requires EPA to issue an inventory of U.S.

[11] *See* U.S. EPA, Office of Pollution Prevention & Toxic Substances, Report to Congress, Potential Export of Mercury Compounds from the United States for Conversion to Elemental Mercury (2009), https://www.epa.gov/sites/production/files/2015-10/documents/mercury-rpt-to-congress-export-ban.pdf.

mercury use, supply, and trade every three years. *See* 15 U.S.C. § 2607(b)(10). A complete inventory will fill gaps in publicly available information about mercury supply, use, and trade maintained through other resources, such as state agencies and IMERC. If EPA does not publish a complete inventory, NRDC will be deprived of significant information about mercury use in the U.S. economy that is otherwise unavailable. This lack of information will hinder NRDC's ability to pursue its mission of eliminating risks from mercury, including by hindering its advocacy and educational activities.

19. I have reviewed EPA's rule requiring reporting from mercury manufacturers and importers to help EPA carry out the triennial mercury inventories, Mercury; Reporting Requirements for the TSCA Mercury Inventory, 83 Fed. Reg. 30,054 (June 27, 2018) (the "Reporting Rule"). I understand that in general, the Reporting Rule requires manufacturers and importers of mercury to report the amount of mercury they (1) manufacture, (2) import, (3) export, (4) store, and (5) distribute in commerce. 40 C.F.R. § 713.9(b). The Rule imposes the same requirements on manufacturers and importers of mercury-added

products, except that they need not report the amount of mercury they store. *Id.* § 713.9(d).

20. I understand that the Reporting Rule exempts from the reporting obligations any person who manufactures or imports "a product that contains a component that is a mercury-added product," e.g., a watch with a mercury-containing battery. *Id.* § 713.7(b).

21. I also understand that the Reporting Rule creates an exemption for those required to report mercury-related information as part of the Chemical Data Reporting (CDR) program, a separate reporting regime under TSCA. Persons who manufacture or import mercury "in amounts greater than or equal to 2,500 pounds (lbs.) for elemental mercury or greater than or equal to 25,000 lbs. for mercury compounds for a specific reporting year" qualify for this exemption. *Id.* § 713.9(a). These large manufacturers and importers are not required to report the amount of mercury they manufacture, import, or export. *Id.*

22. The Rule's exemption for products with mercury-added component parts will prevent NRDC from obtaining important data about switches and relays—components used in a wide array of consumer products and industrial applications. Some examples of

products that use mercury switches and relays as components are pumps, light assemblies, thermostats, and control panels. IMERC considers its 2010 switch-and-relay data "unofficial," and no longer requires submission of this data after 2010, because all the IMERC states with authority to collect the data have banned the sale of mercury-added switches and relays, including when used as components.[12] Given the nature of these products, they can be imported as "components" and thus will not be reported under the Reporting Rule. NRDC will, therefore, have no way of knowing how much mercury is actually being used in new products containing switches and relays within the United States.

23. The exemption for CDR reporters, too, will prevent NRDC from obtaining necessary information. This exemption will ensure that the inventory EPA publishes in 2020 will lack supply data for 2018, the next reporting year under the Reporting Rule, from at least three of the largest companies that manufacture mercury. This shortcoming in the data means that total supply data for 2018 will be unavailable. Absent

[12] IMERC Fact Sheet, Mercury Use in Switches & Relays at 4 (Jan. 2014), http://www.newmoa.org/prevention/mercury/imerc/factsheets/switches_relays_2014.pdf.

that information, it will be impossible for NRDC to know the actual 2018 mercury (and mercury-compound) supply and impossible to compare supply and demand to determine where gaps in mercury use reporting remain.

24. The information gaps described in Paragraphs 22 and 23 above will undermine NRDC's advocacy.

25. For example, EPA is now seeking comment on which chemicals it should select as "high priority" for undergoing risk evaluations under TSCA.[13] One of the criteria EPA will use to select chemicals is the quality and quantity of information available on that chemical. Accordingly, NRDC's organizational interest in reducing mercury releases and exposures achieved through TSCA regulatory action depends on the availability of reliable, comprehensive data on mercury use. The Reporting Rule's exceptions, however, will limit the quantity and quality of data available regarding mercury use.

26. In addition, without a comprehensive mercury inventory, NRDC will be deprived of information it would otherwise use in

[13] *See* EPA, A Working Approach for Identifying Potential Candidate Chemicals for Prioritization; Notice of Availability, 83 Fed. Reg. 50,366 (Oct. 5, 2018).

advocating for effective mercury-use reductions at the federal and state levels. NRDC would use this information, for instance, to inform its strategies to advocate for EPA to recommend specific mercury-reduction regulations, as required under TSCA, *see* 15 U.S.C. § 2605(b), (c), and for Congress to otherwise take action. In addition, NRDC would use this data to advocate for further mercury-use reductions at the state level.

27. Further, NRDC requires accurate information about U.S. mercury use to inform its advocacy to promote implementation of the Minamata Convention, including to assist member countries with compliance. Key questions for NRDC's advocacy include: (1) Is the Minamata Convention working to reduce the supply and flow of mercury and mercury products in the global economy?; and (2) To what extent is there ongoing illegal trade of mercury and mercury products, and if so, for what uses and where? To answer these questions, NRDC requires reliable, comprehensive data on mercury supply, use, and trade.

28. In particular, data on mercury-product imports will help inform NRDC's work to ensure that the United States and other governments are in compliance with their Convention obligations. The

United States, for instance, relies on a unique mechanism under the Convention for compliance, under which it must either demonstrate that the use of specific mercury-added products has reached *de minimis* levels, or undertake further reduction activities.[14] To date, however, the United States has been unable in its reporting to attest to *de minimis* use of mercury in switches and relays because of inadequate data, nor has the United States undertaken any recent significant switch-and-relay use reduction activities of which I am aware.[15] The effectiveness of this compliance mechanism must be reviewed by the parties to the Convention within five years of the Convention coming into force (or by August 17, 2022). NRDC monitors the United States' compliance with the Convention and will be actively engaged in the official review of the efficacy of this compliance mechanism. Such review will be significantly impaired without reliable and complete data

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[14] Minamata Convention on Mercury art. 4, para. 2.

[15] *See* United States, Notification Under Art. 4, Para. 2, of Information on Domestic Measures and Strategies Implemented to Address Mercury-Added Products 5, http://www.mercuryconvention.org/Portals/11/documents/submissions/USA%20declaration_Art%204%20para%202.pdf.

about the presence of mercury-added switches and relays in the U.S. economy, including imports as components.

Mercury-Added Products Database

29. I accessed the IMERC database on November 29, 2018, and again on December 4, 2018. On both occasions, I accessed the webpage for the IMERC Mercury-Added Products Database, *see* http://www.newmoa.org/prevention/mercury/imerc/notification/, and then clicked on the link to "Mercury-added Products Database." Upon entering the database, I clicked on "Browse by Product Category," which revealed a bar on the left-hand side of the window with a menu of product categories.

30. Attached as Exhibit A is a true and correct copy of the list of companies that appeared when I clicked on the category labeled, "vehicles"; the list appears on the database under the heading "Companies that manufacture vehicles, or components used in vehicles."[16]

[16] To print Exhibits A through G, I asked a paralegal at NRDC to use an application called "Snipping Tool" to take a screenshot of each page of the relevant inquiry or report on the database. I then asked the

31. I then accessed the notification reports for the following eighteen of the companies listed: American Honda, Aston Martin, BMW, Fiat, Ford, General Motors, Hyundai, Jaguar / Land Rover, KIA, Mazda, Mercedes Benz, Mitsubishi, Nissan, Porsche, Subaru, Toyota, Volkswagen, and Volvo. To access these reports, I clicked on, "Browse by Company," at the top of the main database page. Upon clicking this box, the letters A-Z appear individually in block letters. To access the company reports, I clicked on the first letter of each company name, which resulted in an alphabetical listing of all the company names of the IMERC reporters beginning with that letter. I then located the automobile manufacturer on that list. To the left of the company name is a box marked "view detail." Upon clicking on that box, many IMERC reports provided by the company are listed, from the most recent at the top down to the oldest at the bottom.

32. Attached as Exhibit B is a true and correct copy of the 2016 company report for BMW of North America, LLC, including the entries under both "Updated Notification" and "Triennial Notification."

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paralegal to convert these screenshots into PDF documents to enable printing, but without editing the screenshots.

33. Attached as Exhibit C is a true and correct copy of the 2016 company report for General Motors Company, including the entries under both "Updated Notification" and "Triennial Notification."

34. Attached as Exhibit D is a true and correct copy of the 2016 company report for Hyundai Motor Company, including the entries under both "Updated Notification" and "Triennial Notification."

35. Attached as Exhibit E is a true and correct copy of the 2016 company report for Kia Motors Corporation, including the entries under both "Updated Notification" and "Triennial Notification."

36. Attached as Exhibit F is a true and correct copy of the 2016 company reports for Nissan Motor Co., Ltd., including the entries under both "Updated Notification" and "Triennial Notification."

37. Attached as Exhibit G is a true and correct copy of the 2016 company report for Volkswagen Group of America, Inc., including the entries under both "Updated Notification" and "Triennial Notification."

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 7 day of December, 2018.

David Lennett

Exhibit A

NEWMOA

MERCURY-ADDED PRODUCTS DATABASE

imerc

- Browse By Product Category
- Browse By Company
- Customized Search

Select a product category for a list of companies that sell mercury-added products.

Displaying 57 companies that manufacture Vehicles, or components used in Vehicles

- Appliances
- Batteries
- Computers
- Dental Amalgam
- Displays/screens
- Electronics
- Formulated Products
- Heating/cooling Equipment
- Industrial Machinery
- Lamp Fixtures
- Lamps
- Measuring Devices
- Medical Instruments
- Miscellaneous
- Office Equipment
- Pumps
- Relays
- Sensors
- Switches
- Thermometers
- Thermostats
- Toys
- Valves
- Vehicles

Detail	Company Name
	Aero Coach Inc.
	Amen-Camp
	American Honda Motor Co., Inc.
	Aston Martin Lagonda Limited
	BMW of North America, LLC
	Bombardier Recreational Products Inc.
	Carriage, Inc.
	Cequent Electrical Products, Inc. (formerly Tekonsha)
	Coachmen Recreational Vehicles Co., LLC
	DRV Luxury Suites (previously DoubleTree RV)
	Dutchmen Manufacturing Inc.
	Fiat USA LLC
	Fleetwood Enterprises, Inc.
	Ford Motor Company
	Forest River, Inc.

Page 1 of 4

View a quick reference guide for instructions on using the customized search feature or visit the INERC website

NEWMOA

MERCURY-ADDED PRODUCTS DATABASE

• Browse By Product Category • Browse By Company • Customized Search

Select a product category from the list to view companies that produce that product.

Displaying 57 companies that manufacture Vehicles, or components used in Vehicles

- Appliances
- Batteries
- Computers
- Dental Amalgam
- Displays/screens
- Electronics
- Formulated Products
- Heating/cooling Equipment
- Industrial Machinery
- Lamp Fixtures
- Lamps
- Measuring Devices
- Medical Instruments
- Miscellaneous
- Office Equipment
- Pumps
- Relays
- Sensors
- Switches
- Thermometers
- Thermostats
- Toys
- Valves
- Vehicles

Detail	Company Name
	Fujitsu Ten Corporation of America
	General Motors Company
	Georgie Boy Manufacturing, LLC
	Gulf Stream Coach, Inc.
	Hopkins Manufacturing Corp.
	Hyundai Motor Company
	Jaguar Land Rover Limited
	Jayco, Inc.
	Kenwood USA Corporation
	Keystone RV Company
	Kia Motors Corporation
	Lance Camper Mfg. Corp.
	Lazy Daze, Inc.
	Mack Trucks, Inc.
	Mazda Motor of America, Inc.

Page 2 of 4

View a quick reference guide for instructions on using the customized search feature or visit the DMRC website for background information on the database and caveats to consider when viewing the data. For information about DMRC and its activities, contact: Rachel Smith, NEWMOA, 89 South Street, Suite 600, Boston, MA 02111; rsmith@newmoa.org ; (617) 367-8558.

ADD 060

NEWMOA

MERCURY-ADDED PRODUCTS DATABASE

» Browse By Product Category | » Browse By Company | » Customized Search

Select a product category for a list of companies that make that product.

Displaying 57 companies that manufacture Vehicles, or components used in Vehicles

- Appliances
- Batteries
- Computers
- Dental Amalgam
- Displays/screens
- Electronics
- Formulated Products
- Heating/cooling Equipment
- Industrial Machinery
- Lamp Fixtures
- Lamps
- Measuring Devices
- Medical Instruments
- Miscellaneous
- Office Equipment
- Pumps
- Relays
- Sensors
- Switches
- Thermometers
- Thermostats
- Toys
- Valves
- Vehicles

Detail	Company Name
	Mercedes-Benz USA, LLC
	Mitsubishi Motors Corp.
	Monaco Coach Corporation
	Namsung America, Inc.
	Navistar, Inc. (formerly International Truck & Engine Corp.)
	Newmar Corp.
	Nissan Motor Co., Ltd.
	PACCAR Inc
	Play-Mor Trailers, Inc.
	Porsche Cars North America
	Saab Automobile AB
	Samsung Electronics America Inc.
	Skyline Corp.
	Subaru of America, Inc.
	Sunline Coach Co.

|◀ ◀ Page 3 of 4 ▶ ▶|

View a quick reference guide for instructions on using the customized search feature or visit the IMERC website for background information on the database and caveats to consider when viewing the data. For information about IMERC and its activities, contact: Rachel Smith, NEWMOA, 89 South Street, Suite 600, Boston, MA 02111; imerc@newmoa.org ; (617) 367-8558.

ADD 061

NEWMOA

MERCURY-ADDED PRODUCTS DATABASE

» Browse By Product Category | » Browse By Company | » Customized Search

Select a product category for a list of companies that make that product.

Displaying 57 companies that manufacture Vehicles, or components used in Vehicles

- Appliances
- Batteries
- Computers
- Dental Amalgam
- Displays/screens
- Electronics
- Formulated Products
- Heating/cooling Equipment
- Industrial Machinery
- Lamp Fixtures
- Lamps
- Measuring Devices
- Medical Instruments
- Miscellaneous
- Office Equipment
- Pumps
- Relays
- Sensors
- Switches
- Thermometers
- Thermostats
- Toys
- Valves
- Vehicles

Detail	Company Name
	SunnyBrook RV, Inc.
	The Toro Company
	Theory3, Inc. dba Tireflys
	Thor America, Inc.
	Thor Motor Coach (formerly Four Winds International)
	Tiffin Motor Homes, Inc.
	Toyota Motor Sales, U.S.A., Inc.
	Volkswagen Group of America, Inc.
	Volvo Cars - North America LLC
	Volvo Trucks North America, Inc.
	Winnebago Ind., Inc
	Xplorer Motor Homes

Page 4 of 4

View a quick reference guide for instructions on using the customized search feature or visit the IMERC website for background information on the database and caveats to consider when viewing the data. For information about IMERC and its activities, contact: Rachel Smith, NEWMOA, 89 South Street, Suite 600, Boston, MA 02111; imerc@newmoa.org ; (617) 367-8558.

ADD 062

Exhibit B

Company Filings

Organization Info.

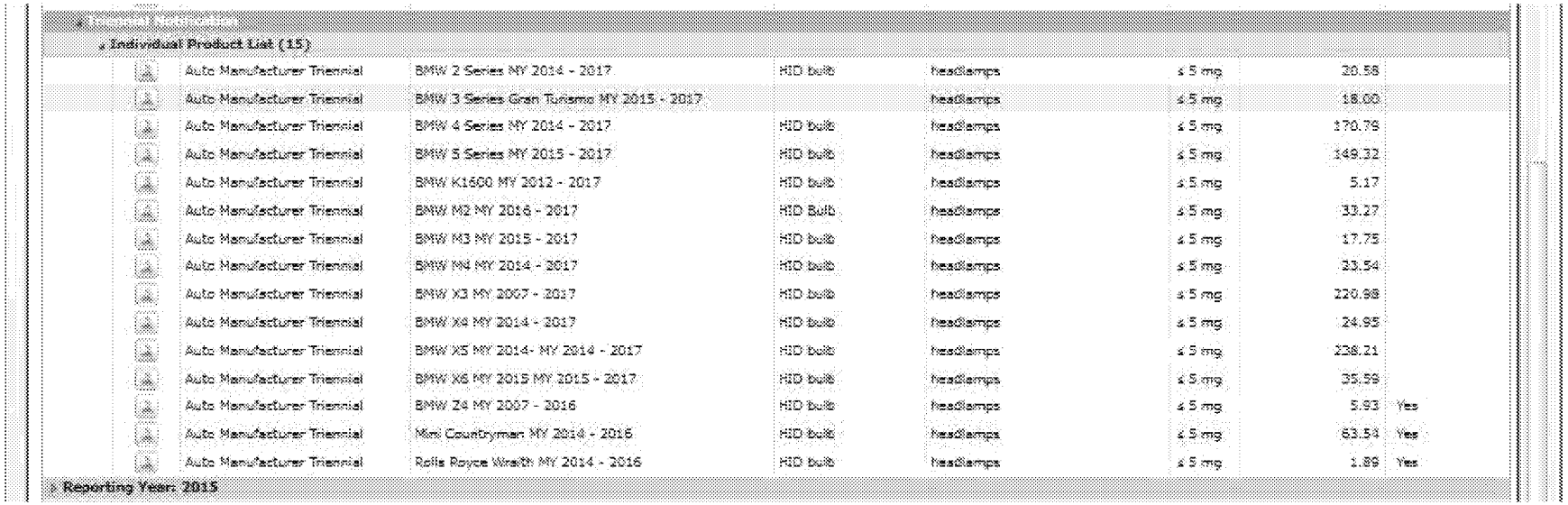
BMW of North America, LLC
150 Chestnut Ridge Road
Woodcliff Lake, NJ 07677-7731
201-307-4000
http://www.bmwusa.com

Primary Contact: Azita Khalili
Title: California Environmental Regulatory Manager

* For Group Product, please note the "total mercury" shown on each product is for the entire group (not for each product).

Submitted Reports

Detail	Notification Type	Product Name	Component Name	Comp. Location	Range	Total Mercury (g)	Phased-Out?
Reporting Year: 2018							
Reporting Year: 2017							
Reporting Year: 2016							
Individual Product List (16)							
	Auto Manufacturer Annual Update	BMW 2 Series MY 2014 - 2017	HID bulb	headlamps	≤ 5 mg		
	Auto Manufacturer Annual Update	BMW 3 Series Gran Turismo MY 2015 - 2016	HID Bulb	headlamps	≤ 5 mg		Yes
	Auto Manufacturer Annual Update	BMW 4 Series MY 2014 - 2017	HID bulb	headlamps	≤ 5 mg		
	Auto Manufacturer Annual Update	BMW 5 Series MY 2015 - 2017	HID bulb	headlamps	≤ 5 mg		
	Auto Manufacturer Annual Update	BMW K1600 MY 2012 - 2017	HID bulb	headlamps	≤ 5 mg		
	Auto Manufacturer Annual Update	BMW M2 MY 2016 - 2017	HID bulb	headlamps	≤ 5 mg		
	Auto Manufacturer Annual Update	BMW M3 MY 2015 - 2017	HID bulb	headlamps	≤ 5 mg		
	Auto Manufacturer Annual Update	BMW M4 MY 2014 - 2017	HID bulb	headlamps	≤ 5 mg		
	Auto Manufacturer Annual Update	BMW X3 MY 2007 - 2017	HID bulb	headlamps	≤ 5 mg		
	Auto Manufacturer Annual Update	BMW X4 MY 2014 - 2017	HID bulb	headlamps	≤ 5 mg		
	Auto Manufacturer Annual Update	BMW X5 MY 2014- MY 2014 - 2017	HID bulb	headlamps	≤ 5 mg		
	Auto Manufacturer Annual Update	BMW X6 MY 2015 MY 2015 - 2017	HID bulb	headlamps	≤ 5 mg		
	Auto Manufacturer Annual Update	BMW Z4 MY 2007 - 2016	HID bulb	headlamps	≤ 5 mg		Yes
	Auto Manufacturer Annual Update	Mini Countryman MY 2014 - 2016	HID bulb	headlamps	≤ 5 mg		Yes
	Auto Manufacturer Annual Update	Mini Paceman MY 2014 - 2015	HID bulb	headlamps	≤ 5 mg		Yes
	Auto Manufacturer Annual Update	Rolls Royce Wraith MY 2014 - 2016	HID bulb	headlamps	≤ 5 mg		Yes



Individual Product List (15)

Auto Manufacturer Triennial	BMW 2 Series MY 2014 - 2017	HID bulb	headlamps	≤ 5 mg	20.58		
Auto Manufacturer Triennial	BMW 3 Series Gran Turismo MY 2015 - 2017		headlamps	≤ 5 mg	18.00		
Auto Manufacturer Triennial	BMW 4 Series MY 2014 - 2017	HID bulb	headlamps	≤ 5 mg	170.76		
Auto Manufacturer Triennial	BMW 5 Series MY 2015 - 2017	HID bulb	headlamps	≤ 5 mg	149.32		
Auto Manufacturer Triennial	BMW K1600 MY 2012 - 2017	HID bulb	headlamps	≤ 5 mg	5.17		
Auto Manufacturer Triennial	BMW M2 MY 2016 - 2017	HID Bulb	headlamps	≤ 5 mg	33.27		
Auto Manufacturer Triennial	BMW M3 MY 2015 - 2017	HID bulb	headlamps	≤ 5 mg	17.75		
Auto Manufacturer Triennial	BMW M4 MY 2014 - 2017	HID bulb	headlamps	≤ 5 mg	23.54		
Auto Manufacturer Triennial	BMW X3 MY 2007 - 2017	HID bulb	headlamps	≤ 5 mg	220.98		
Auto Manufacturer Triennial	BMW X4 MY 2014 - 2017	HID bulb	headlamps	≤ 5 mg	24.95		
Auto Manufacturer Triennial	BMW X5 MY 2014- MY 2014 - 2017	HID bulb	headlamps	≤ 5 mg	238.21		
Auto Manufacturer Triennial	BMW X6 MY 2015 MY 2015 - 2017	HID bulb	headlamps	≤ 5 mg	35.59		
Auto Manufacturer Triennial	BMW Z4 MY 2007 - 2016	HID bulb	headlamps	≤ 5 mg	5.93	Yes	
Auto Manufacturer Triennial	Mini Countryman MY 2014 - 2016	HID bulb	headlamps	≤ 5 mg	63.54	Yes	
Auto Manufacturer Triennial	Rolls Royce Wraith MY 2014 - 2016	HID bulb	headlamps	≤ 5 mg	1.89	Yes	

Reporting Year: 2015

Exhibit C

Company Filings

Organization Info.

General Motors Company
300 Renaissance Center
Detroit, 48265
313-667-2490
http://www.gm.com

Primary Contact: Teri Kline
Title: Manager, Product Chemical Regulatory Compliance

* For Group Product, please note the "total mercury" shown at each product is for the entire group (not for each product).

Submitted Filings

Detail	Notification Type	Product Name	Component Name	Comp. Location	Range	Total Mercury (g)	Phased-Out?
Reporting Year: 2018							
Reporting Year: 2017							
Reporting Year: 2016							
Triennial Notification							
Individual Product List (4)							
	Auto Manufacturer Annual Update	Buick Enclave MY 2013 - 2017	lamp	entertainment display	≤ 5 mg		
	Auto Manufacturer Annual Update	Cadillac SRX MY 2015 - 2016	HID Bulb	Headlamp	≤ 5 mg		Yes
	Auto Manufacturer Annual Update	Chevrolet Traverse MY 2011 - 2017	lamp	entertainment display	≤ 5 mg		
	Auto Manufacturer Annual Update	GMC Acadia MY 2013 - 2017	entertainment display	entertainment display	≤ 5 mg		
Annual Notification							
Group Products: Headlamps (3)							
	Auto Manufacturer Triennial	Buick Cascada MY 2016 - 2017	HID bulb	Headlamps		761.88	Yes
	Auto Manufacturer Triennial	Cadillac CTS-V MY 2011 - 2015	HID bulb	headlamps	≤ 5 mg		
	Auto Manufacturer Triennial	Cadillac SRX MY 2015 - 2016	HID Bulb	Headlamp	≤ 5 mg		
Group Products: Rear Seat Entertainment Display (5)							
	Auto Manufacturer Triennial	Buick Enclave MY 2013 - 2017	lamp	entertainment display	≤ 5 mg		
	Auto Manufacturer Triennial	Chevrolet Equinox MY 2009 - 2015	lamp	entertainment display	≤ 5 mg		
	Auto Manufacturer Triennial	Chevrolet Traverse MY 2011 - 2017	lamp	entertainment display	≤ 5 mg		
	Auto Manufacturer Triennial	GMC Acadia MY 2013 - 2017	entertainment display	entertainment display	≤ 5 mg		
	Auto Manufacturer Triennial	GMC Terrain MY 2010 - 2015	lamp	entertainment display	≤ 5 mg		
Individual Product List (1)							
	Auto Manufacturer Triennial	Cadillac CTS-V MY 2011 - 2015	lamp	navigation display	> 5 mg and ≤ 10 mg		
Reporting Year: 2015							

ADD 067

Exhibit D

Organization Info.

Hyundai Motor Company
c/o Hyundai-Kia America Technical Center
Superior Township, MI 48198
734-337-2341
http://www.hyundaiusa.com

Primary Contact: John Gantchar
Title: Senior Engineer, Certification and Compliance

* For Group Product, please note the "total mercury" shown at each product is for the entire group (not for each product).

Submitted Filings

Detail	Notification Type	Product Name	Component Name	Comp. Location	Range	Total Mercury (g)	Phased-Out?
▸ Reporting Year: 2018							
▸ Reporting Year: 2017							
▾ Reporting Year: 2016							
▾ Updated Notification							
▾ Individual Product List (11)							
	Auto Manufacturer Annual Update	Hyundai Azera MY 2012 - 2017	HID Bulb	Headlamps	≤ 5 mg		
	Auto Manufacturer Annual Update	Hyundai Elantra 1.6L turbo MY 2016 - 2017	LAMP ASSY-HEAD(LOW,HID),RH	Headlamps	≤ 5 mg		
	Auto Manufacturer Annual Update	Hyundai Equus MY 2010 - 2015	lamp	navigation display	≤ 5 mg		Yes
	Auto Manufacturer Annual Update	Hyundai Equus MY 2010 - 2015	lamp	entertainment display	≤ 5 mg		Yes
	Auto Manufacturer Annual Update	Hyundai Equus MY 2010 - 2017	HID Bulb	Headlamp	≤ 5 mg		
	Auto Manufacturer Annual Update	Hyundai Genesis Coupe MY 2010 - 2017	HID Bulb	Headlamp	≤ 5 mg		
	Auto Manufacturer Annual Update	Hyundai Genesis G90 MY 2016 - 2017	LAMP ASSY-HEAD(LOW,HID),LH	Headlamps	≤ 5 mg		
	Auto Manufacturer Annual Update	Hyundai Genesis Sedan MY 2015 - 2017	HID Bulb	Front	≤ 5 mg		
	Auto Manufacturer Annual Update	Hyundai Santa FE MY 2016 - 2017	HEAD LAMP ASSY, LH (LOW/HIGH, HID)	Headlamps	≤ 5 mg		
	Auto Manufacturer Annual Update	Hyundai Sonata MY 2014 - 2015	HID Bulbs	Headlamps	≤ 5 mg		Yes
	Auto Manufacturer Annual Update	Hyundai Tuscon MY 2009 - 2015	lamp	navigation display	≤ 5 mg		Yes
▾ Triennial Notification							
▾ Individual Product List (9)							
	Auto Manufacturer Triennial	Hyundai Azera MY 2012 - 2017	HID Bulb	Headlamps	≤ 5 mg	2.62	
	Auto Manufacturer Triennial	Hyundai Elantra 1.6L turbo MY 2016 - 2017	LAMP ASSY-HEAD(LOW,HID),RH	Headlamps	≤ 5 mg	3.91	
	Auto Manufacturer Triennial	Hyundai Equus MY 2010 - 2017	HID Bulb	Headlamp	≤ 5 mg	1.56	
	Auto Manufacturer Triennial	Hyundai Genesis Coupe MY 2010 - 2017	HID Bulb	Headlamp	≤ 5 mg	2.28	

Auto Manufacturer Triennial	Hyundai Genesis Coupe MY 2010 - 2017	HID bulb	headlamp	≤ 5 mg	2.28	
Auto Manufacturer Triennial	Hyundai Genesis G90 MY 2016 - 2017	LAMP ASSY-HEAD(LOW,HID),LH	headlamps	≤ 5 mg	0.8239	
Auto Manufacturer Triennial	Hyundai Genesis Sedan MY 2010 - 2015	HID bulb	headlamp	≤ 5 mg	0.011	
Auto Manufacturer Triennial	Hyundai Genesis Sedan MY 2015 - 2017	HID bulb	Front	≤ 5 mg	27.01	
Auto Manufacturer Triennial	Hyundai Santa FE MY 2016 - 2017	HEAD LAMP ASSY, LH (LOW/HIGH, HID)	headlamps	≤ 5 mg	4.67	
Auto Manufacturer Triennial	Hyundai Sonata MY 2014 - 2015	HID bulbs	headlamps	≤ 5 mg	0.0066	
Reporting Year: 2015						

Exhibit E

Organization Info.

Kia Motors Corporation
c/o Hyundai-Kia America Technical Center
Superior Township, MI 48198
734-337-2341
http://www.kia.com

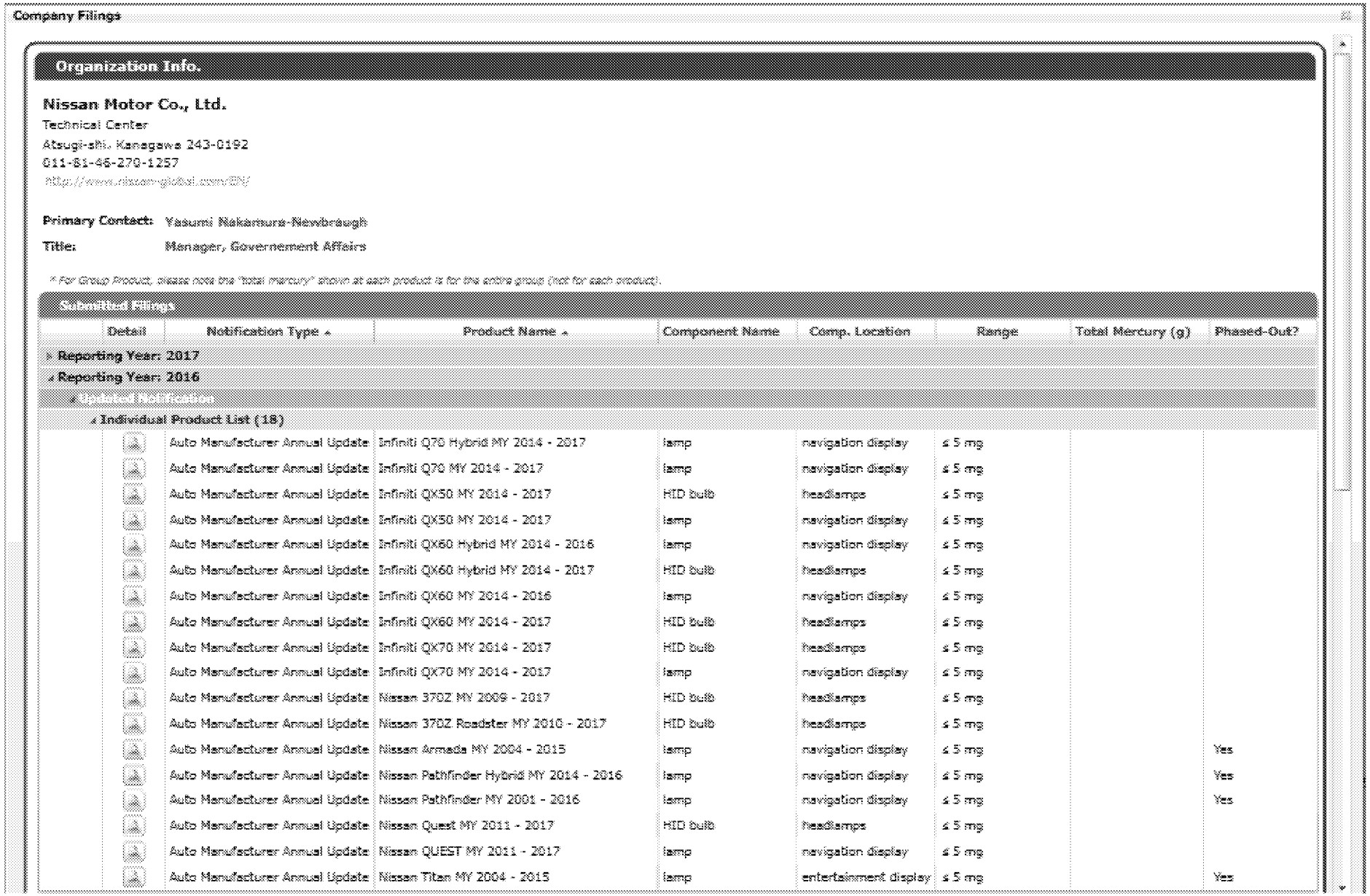
Primary Contact: John Gantchar
Title: Senior Engineer

* For Group Product, please note the "total mercury" shown at each product is for the entire group (not for each product).

Submitted Filings

Detail	Notification Type	Product Name	Component Name	Comp. Location	Range	Total Mercury (g)	Phased-Out?
Reporting Year: 2018							
Reporting Year: 2017							
Reporting Year: 2016							
Updated Notification							
Individual Product List (4)							
	Auto Manufacturer Annual Update	Kia Cadenza MY 2013 - 2017	HID bulbs	headlamps	≤ 5 mg		
	Auto Manufacturer Annual Update	Kia NIRO MY 2016 - 2017	HID (HID HEADLIGHTS)	Front Of Vehicle	≤ 5 mg		
	Auto Manufacturer Annual Update	Kia Optima MY 2011 - 2017	HID bulbs	headlamps	≤ 5 mg		
	Auto Manufacturer Annual Update	Kia Sportage MY 2015 - 2017	Headlamp	Front	≤ 5 mg		
Triennial Notification							
Individual Product List (6)							
	Auto Manufacturer Triennial	Kia Cadenza MY 2013 - 2017	HID bulbs	headlamps	≤ 5 mg	11.90	
	Auto Manufacturer Triennial	Kia NIRO MY 2016 - 2017	HID (HID HEADLIGHTS)	Front Of Vehicle	≤ 5 mg	0	
	Auto Manufacturer Triennial	Kia Optima MY 2011 - 2017	HID bulbs	headlamps	≤ 5 mg	51.14	
	Auto Manufacturer Triennial	Kia Sedona MY 2005 - 2015	lamp	entertainment display	≤ 5 mg	0	
	Auto Manufacturer Triennial	Kia Sedona MY 2009 - 2015	lamp	navigation display	≤ 5 mg	1.63	
	Auto Manufacturer Triennial	Kia Sportage MY 2014 - 2017	Headlamp	Front	≤ 5 mg	18.36	
Reporting Year: 2015							

Exhibit F



Company Filings

Organization Info.

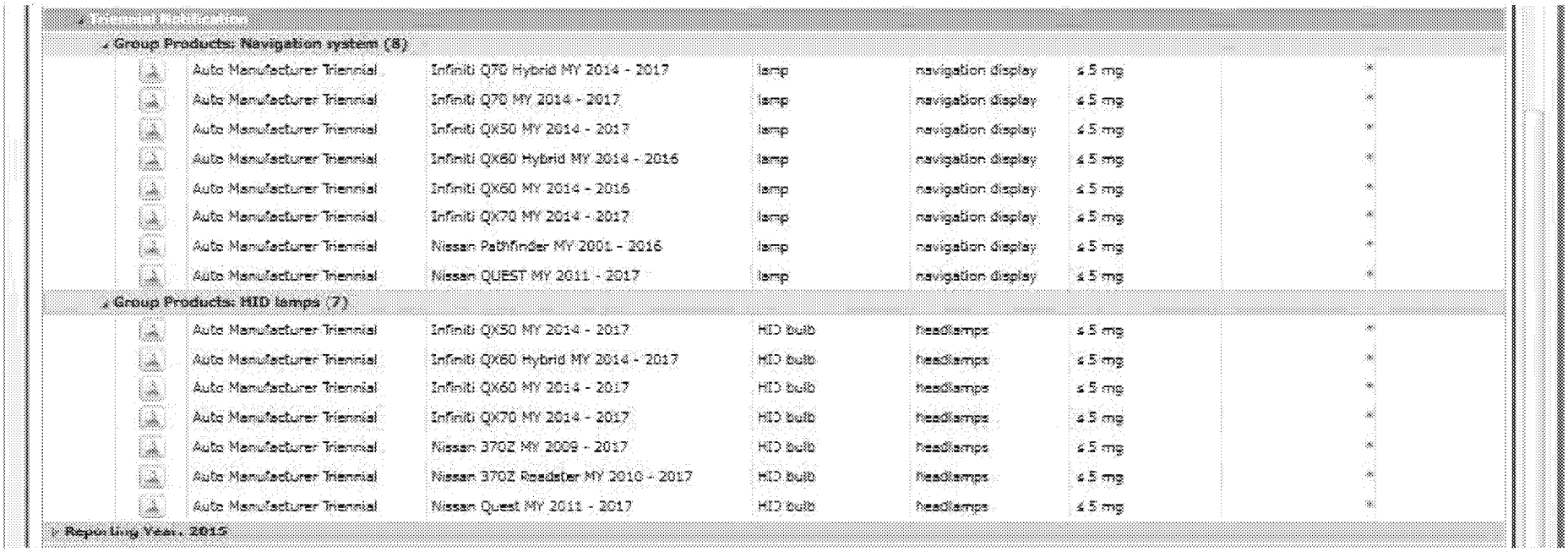
Nissan Motor Co., Ltd.
Technical Center
Atsugi-shi, Kanagawa 243-0192
011-81-46-270-1257
http://www.nissan-global.com/EN/

Primary Contact: Yasumi Nakamura-Newbraugh
Title: Manager, Government Affairs

* For Group Product, please note the "total mercury" shown at each product is for the entire group (not for each product).

Submitted Filings

Detail	Notification Type	Product Name	Component Name	Comp. Location	Range	Total Mercury (g)	Phased-Out?
› Reporting Year: 2017							
⌄ Reporting Year: 2016							
⌄ Individual Product List (18)							
	Auto Manufacturer Annual Update	Infiniti Q70 Hybrid MY 2014 - 2017	lamp	navigation display	≤ 5 mg		
	Auto Manufacturer Annual Update	Infiniti Q70 MY 2014 - 2017	lamp	navigation display	≤ 5 mg		
	Auto Manufacturer Annual Update	Infiniti QX50 MY 2014 - 2017	HID bulb	headlamps	≤ 5 mg		
	Auto Manufacturer Annual Update	Infiniti QX50 MY 2014 - 2017	lamp	navigation display	≤ 5 mg		
	Auto Manufacturer Annual Update	Infiniti QX60 Hybrid MY 2014 - 2016	lamp	navigation display	≤ 5 mg		
	Auto Manufacturer Annual Update	Infiniti QX60 Hybrid MY 2014 - 2017	HID bulb	headlamps	≤ 5 mg		
	Auto Manufacturer Annual Update	Infiniti QX60 MY 2014 - 2016	lamp	navigation display	≤ 5 mg		
	Auto Manufacturer Annual Update	Infiniti QX60 MY 2014 - 2017	HID bulb	headlamps	≤ 5 mg		
	Auto Manufacturer Annual Update	Infiniti QX70 MY 2014 - 2017	HID bulb	headlamps	≤ 5 mg		
	Auto Manufacturer Annual Update	Infiniti QX70 MY 2014 - 2017	lamp	navigation display	≤ 5 mg		
	Auto Manufacturer Annual Update	Nissan 370Z MY 2009 - 2017	HID bulb	headlamps	≤ 5 mg		
	Auto Manufacturer Annual Update	Nissan 370Z Roadster MY 2010 - 2017	HID bulb	headlamps	≤ 5 mg		
	Auto Manufacturer Annual Update	Nissan Armada MY 2004 - 2015	lamp	navigation display	≤ 5 mg		Yes
	Auto Manufacturer Annual Update	Nissan Pathfinder Hybrid MY 2014 - 2016	lamp	navigation display	≤ 5 mg		Yes
	Auto Manufacturer Annual Update	Nissan Pathfinder MY 2001 - 2016	lamp	navigation display	≤ 5 mg		Yes
	Auto Manufacturer Annual Update	Nissan Quest MY 2011 - 2017	HID bulb	headlamps	≤ 5 mg		
	Auto Manufacturer Annual Update	Nissan QUEST MY 2011 - 2017	lamp	navigation display	≤ 5 mg		
	Auto Manufacturer Annual Update	Nissan Titan MY 2004 - 2015	lamp	entertainment display	≤ 5 mg		Yes



▲ Triennial Notification						
▲ Group Products: Navigation system (8)						
	Auto Manufacturer Triennial	Infiniti Q70 Hybrid MY 2014 - 2017	lamp	navigation display	≤ 5 mg	*
	Auto Manufacturer Triennial	Infiniti Q70 MY 2014 - 2017	lamp	navigation display	≤ 5 mg	*
	Auto Manufacturer Triennial	Infiniti QX50 MY 2014 - 2017	lamp	navigation display	≤ 5 mg	*
	Auto Manufacturer Triennial	Infiniti QX60 Hybrid MY 2014 - 2016	lamp	navigation display	≤ 5 mg	*
	Auto Manufacturer Triennial	Infiniti QX60 MY 2014 - 2016	lamp	navigation display	≤ 5 mg	*
	Auto Manufacturer Triennial	Infiniti QX70 MY 2014 - 2017	lamp	navigation display	≤ 5 mg	*
	Auto Manufacturer Triennial	Nissan Pathfinder MY 2001 - 2016	lamp	navigation display	≤ 5 mg	*
	Auto Manufacturer Triennial	Nissan QUEST MY 2011 - 2017	lamp	navigation display	≤ 5 mg	*
▲ Group Products: HID lamps (7)						
	Auto Manufacturer Triennial	Infiniti QX50 MY 2014 - 2017	HID bulb	headlamps	≤ 5 mg	*
	Auto Manufacturer Triennial	Infiniti QX60 Hybrid MY 2014 - 2017	HID bulb	headlamps	≤ 5 mg	*
	Auto Manufacturer Triennial	Infiniti QX60 MY 2014 - 2017	HID bulb	headlamps	≤ 5 mg	*
	Auto Manufacturer Triennial	Infiniti QX70 MY 2014 - 2017	HID bulb	headlamps	≤ 5 mg	*
	Auto Manufacturer Triennial	Nissan 370Z MY 2009 - 2017	HID bulb	headlamps	≤ 5 mg	*
	Auto Manufacturer Triennial	Nissan 370Z Roadster MY 2010 - 2017	HID bulb	headlamps	≤ 5 mg	*
	Auto Manufacturer Triennial	Nissan Quest MY 2011 - 2017	HID bulb	headlamps	≤ 5 mg	*
▶ Reporting Year: 2013						

Exhibit G

Organization Info:

Volkswagen Group of America, Inc.
3800 Hamlin Rd.
Auburn Hills, MI 48326
248-754-5000
http://www.vw.com

Primary Contact: Joseph Lucht
Title: Materials Management Specialist

* For Group Product, please note the "Total Mercury" shown at each product is for the entire group (not for each product).

Submitted Filings

Detail	Notification Type	Product Name	Component Name	Comp. Location	Range	Total Mercury (g)	Phased-Out?
Reporting Year: 2015							
Biennial Notification							
Individual Product List (9)							
	Auto Manufacturer Annual Update	Audi A8 MY 2013 - 2016	Lamp	navigation display	≤ 5 mg		
	Auto Manufacturer Annual Update	Audi R8 MY 2013 - 2016	lamp	navigation display	≤ 5 mg		
	Auto Manufacturer Annual Update	Audi TTS MY 2014 - 2016	lamp	navigation display	> 5 mg and ≤ 10 mg		
	Auto Manufacturer Annual Update	Bentley Continental GT MY 2013 - 2016	lamp	navigation display	≤ 5 mg		
	Auto Manufacturer Annual Update	Bentley Continental GT MY 2013 - 2016	Bulb	Instrument Cluster	> 10 mg and ≤ 50 mg		
	Auto Manufacturer Annual Update	Bentley Continental GT SuperSports MY 2011 - 2016	lamp	navigation display	≤ 5 mg		
	Auto Manufacturer Annual Update	Bentley Mulsanne MY 2011 - 2016	lamp	navigation display	≤ 5 mg		
	Auto Manufacturer Annual Update	Lamborghini Aventador MY 2014 - 2016	lamp	navigation display	≤ 5 mg		
	Auto Manufacturer Annual Update	Volkswagen Passat MY 2006 - 2016	lamp	navigation display	≤ 5 mg		
Triennial Notification							
Individual Product List (12)							
	Auto Manufacturer Triennial	Audi A8 MY 2013 - 2016	Lamp	navigation display	≤ 5 mg		
	Auto Manufacturer Triennial	Audi R8 MY 2013 - 2016	lamp	navigation display	≤ 5 mg		
	Auto Manufacturer Triennial	Audi TT RS MY 2014 - 2015	lamp	navigation display	≤ 5 mg		Yes
	Auto Manufacturer Triennial	Audi TTS MY 2014 - 2016	lamp	navigation display	> 5 mg and ≤ 10 mg		Yes
	Auto Manufacturer Triennial	Bentley Continental GT MY 2013 - 2016	lamp	navigation display	≤ 5 mg		
	Auto Manufacturer Triennial	Bentley Continental GT MY 2013 - 2016	Bulb	Instrument Cluster	> 10 mg and ≤ 50 mg		
	Auto Manufacturer Triennial	Bentley Continental GT Super Sports MY 2011 - 2016	Bulb	Instrument Cluster	> 10 mg and ≤ 50 mg	134.00	
	Auto Manufacturer Triennial	Bentley Continental GT Super Sports MY 2011 - 2016	lamp	entertainment display	≤ 5 mg	0.345	

	Auto Manufacturer Triennial	Bentley Continental GT SuperSports MY 2011 - 2016	lamp	navigation display	≤ 5 mg	
	Auto Manufacturer Triennial	Bentley Mulsanne MY 2011 - 2016	lamp	navigation display	≤ 5 mg	
	Auto Manufacturer Triennial	Lamborghini Aventador MY 2014 - 2016	lamp	navigation display	≤ 5 mg	
	Auto Manufacturer Triennial	Volkswagen Passat MY 2006 - 2016	lamp	navigation display	≤ 5 mg	
› Reporting Year: 2015						

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

NATURAL RESOURCES DEFENSE COUNCIL, INC., and STATE OF VERMONT, *Petitioners,* v. U.S. ENVIRONMENTAL PROTECTION AGENCY and ANDREW R. WHEELER, in his capacity as Acting Administrator of the U.S. Environmental Protection Agency, *Respondents.*	Docket No. 18-2121 Consolidated with Docket No. 18-2670

DECLARATION OF MAE WU

I, Mae Wu, declare as follows:

1. I make this declaration of my own personal knowledge, unless otherwise indicated, and could and would testify as set forth herein if called to do so.

2. I am a senior attorney with the Natural Resources Defense Council (NRDC), presently practicing within NRDC's Healthy People & Thriving Communities Program. I have worked at NRDC for more than

a decade. My present work focuses on advocacy to protect public health and the environment from toxic chemicals and pesticides.

3. NRDC is a non-profit advocacy organization committed to the protection of human health and the environment. NRDC's mission is to safeguard the earth—its people, its plants and animals, and the natural systems on which all life depends. To further this mission, NRDC works to reduce mercury pollution both domestically and internationally, and works to inform and educate the public about mercury uses and risks from mercury exposure.

4. For example, NRDC has published several documents to inform consumers about the risks of mercury in fish and to help guide safer seafood consumption.[1] These guides inform consumers how often they can safely eat various fish, such as tuna, and provide particular advice to pregnant women. NRDC's guides also inform consumers about

[1] *See, e.g.*, Nicole Greenfield, The Smart Seafood Buying Guide (Aug. 26, 2015), https://www.nrdc.org/stories/smart-seafood-buying-guide; NRDC, Safe Sushi, https://www.nrdc.org/sites/default/files/sushi.pdf; NRDC, Mercury in Fish, https://www.nrdc.org/sites/default/files/walletcard.pdf.

how to safely handle mercury-containing products, like thermometers, and how to avoid potential mercury exposure from dental fillings.[2]

5. As part of NRDC's advocacy, I have worked to inform the public about the risks of mercury pollution and ways of reducing exposure. For example, I authored a blog post informing the public about how mercury in dental amalgam ends up in the nation's waterways and contributes to the risks of mercury exposure.[3] My blog informed the public about a rule EPA proposed to prevent discharges of dental amalgam into wastewater. When EPA attempted to withdraw its final rule preventing these discharges, I again authored a blog post informing the public.[4]

6. In my work, I regularly use data about chemicals and pesticides that are maintained by federal agencies. Often, the information obtained and published by federal agencies is the only way

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[2] Shanti Menon, Mercury Guide (Mar. 10, 2016), https://www.nrdc.org/stories/mercury-guide.

[3] *See* Mae Wu, Expert Blog, EPA's Common Sense Rules on Mercury from Dental Offices (Sept. 16, 2014), https://www.nrdc.org/experts/mae-wu/epas-common-sense-rule-mercury-dental-offices.

[4] *See* Mae Wu, Expert Blog, Factsheet: Limiting Mercury Pollution (Feb. 1, 2017), https://www.nrdc.org/experts/mae-wu/factsheet-limiting-mercury-pollution.

such information about toxic chemicals and pesticides is available. I use this data, for instance, by incorporating it into my blog posts and written comments submitted regarding federal rulemakings.

7. In this way, the availability of accurate and reliable information about mercury uses furthers NRDC's mercury-reduction efforts. For example, because information about mercury use in dental amalgam is relatively comprehensive, NRDC has been effective at advocating for its reduction in that context.

8. Without publicly available information about the prevalence of mercury in particular products, NRDC cannot educate the public about the risks such products may pose. Only with a complete understanding of the products in which mercury is used can NRDC educate and inform the public about their risks.

9. I understand that EPA recently issued a reporting rule under the Toxic Substances Control Act which requires reporting of information about mercury use, supply, and trade in the United States (the Reporting Rule). I understand that the Reporting Rule exempts certain important categories of mercury information. These exemptions mean that EPA and the public will not have comprehensive information

about mercury use and supply in the United States. Some of the relevant data will be missing.

10. This lack of information will hinder NRDC's ability to pursue its mission of eliminating risks from mercury, including by hindering NRDC's public outreach and educational activities relating to risks posed by mercury. NRDC's efforts to inform the public about mercury in products will be necessarily undermined by an incomplete inventory of mercury-added products. For example, NRDC will be unable to inform consumers about which watches or children's toys contain mercury-added batteries.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 7th day of December, 2018

Mae Wu